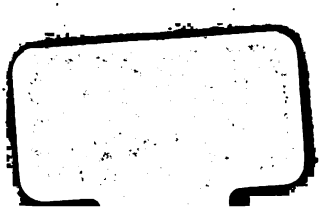

RAILWAY PASSENGERS

AND

RAILWAY COMPANIES.

RAILWAY PASSENGERS

AND

RAILWAY COMPANIES:

THEIR DUTIES,

RIGHTS AND LIABILITIES.

BY

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PREFACE.

THE object of this little book is, as its title denotes, to inform Railway Passengers and Railway Companies what are their respective duties, rights, and liabilities, as declared by the Legislature and judicial decisions of the Superior Courts. It is hoped that it will be of use to the travelling public as well as to the legal practitioner. It has been the Author's endeavour to express, as it at present stands, the whole law relating to Railway Passengers in such manner that it may be intelligible to any reader. The want of such a work has, he believes, been much felt; his labour will have been well repaid if this work is found in any measure to supply that want.

L. A. G.

MIDDLE TEMPLE,
December, 1876.

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RAILWAY PASSENGERS AND RAILWAY COMPANIES.

CHAPTER I.

MODERN ORIGIN OF THE LAW RELATING TO PASSENGERS.

THE first case (*a*) in which the liability of common carriers of passengers came into question was so recently as 1791, in a case tried before Lord Kenyon. That related to a mail-coach. The first Railway Act was passed ten years later, in 1801, namely, for the construction of a railway from Wandsworth to Croydon for conveyance of coals, corn, and other goods. In 1832, an Act of Parliament (*b*) was passed for the levying of duties in respect of passengers conveyed for hire by carriages travelling on railways. In 1840 (*c*), an Act to regulate railways "for the public conveyance of passengers or goods" was passed. In 1845 (*d*), the Railways

(*a*) Angell on Carriers.
(*b*) 2 & 3 Will. IV. c. 120; repealed, 5 & 6 Vict. c. 79.
(*c*) 3 & 4 Vict. c. 97.
(*d*) 8 & 9 Vict. c. 20, s. 86.

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Clauses Consolidation Act was passed; and by sect. 86 it was enacted that "it shall be lawful for the company to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the Special Act authorised to be taken by them." In 1846, Lord Campbell's Act (*e*), for compensating the families of persons killed by accidents, was passed.

(*e*) 9 & 10 Vict. c. 93; amended, 27 & 28 Vict. c. 95.

CHAPTER II.

I.—GENERAL OBLIGATION TO CARRY.

THE first and most general obligation on the part of passenger carriers on land (in which are included railway companies), is to carry passengers whenever they offer themselves, and are ready to pay for their transportation. This results from their setting themselves up, like innkeepers, and common carriers of goods, for a common public employment on hire. They are no more at liberty to refuse a passenger, if they have sufficient room and accommodation, than an innkeeper is to refuse suitable room and accommodation to a guest. And upon an unconditional contract to carry, they are bound to provide room for all. But although passenger carriers are thus bound to carry passengers, the duties of the former, as well as the rights of the latter, have certain prescribed limits and implied qualifications. Thus, for example, the passengers are bound to submit to such reasonable regulations as the proprietors may adopt for the convenience and comfort of the other passengers, as well as for their own proper interests (*a*).

(*a*) Story on Bailments (1870), s. 591; Angell on Carriers, s. 525.

CHAP. II. II.—WANT OF ROOM (IN ABSENCE OF CONDITION), NO EXCUSE.

A railway company will not be excused from carrying passengers according to their contract upon the ground that there is no room for them in the train; the company not having made their contract conditional upon there being room. This was decided in a case (*b*) which occurred in 1851, during the period of the Great Exhibition in Hyde Park. At such time the Great Northern Railway Company were in the habit of issuing "Excursion Tickets" for the conveyance of passengers from various places on their line to London and back, at a low price. Hawcroft, a confectioner, at Barnsley, in Yorkshire, took one of these tickets at Barnsley, on 2nd of August. He paid 5*s*. for it. It was in the following form:

GREAT EXHIBITION.

BARNSLEY TO KING'S CROSS AND BACK.

Third Class.

and upon the back,

EXCURSION TICKET.

To return by the trains advertised for that purpose, on any day not beyond fourteen days after date hereof.

The company advertised certain "Exhibition Trains" for the conveyance from King's Cross

(*b*) *Hawcroft* v. *Gt. Northern Rail. Co.*, 21 L. J. Q. B. 178.

during August, of persons holding "Excursion Tickets." A passenger for Barnsley would proceed to Doncaster on the Great Northern, and thence by the S. Yorkshire to Barnsley. The times of arrival at Doncaster, but not at Barnsley, were mentioned in the advertisement. A train was advertised to start on Saturday morning at 6.45. Accordingly, on Saturday, the 9th August, Hawcroft went to the station at King's Cross, with the intention of leaving by the 6.45 train, but in consequence of the great pressure of passengers he was unable to obtain a seat. The station-master refused to forward him by a train leaving shortly after the excursion train, but he prepared another train for the holders of "excursion tickets," and despatched it at mid-day. That train was also filled with passengers without Hawcroft being able to obtain a seat. The company might with safety have despatched a sufficient number of trains to take all holders of excursion tickets, but they had not sufficient.carriages, engines, or servants. They sent as usual the advertised excursion train at 9.15 in the evening, and Hawcroft went by this. This train reached Doncaster at 6 a.m. next morning, and Hawcroft found that, it being Sunday, there was no train on to Barnsley. He, therefore, engaged a carriage to convey him from Doncaster to Barnsley. He afterwards sued the Great Northern Railway Company for damages, £21 (*c*). It was

(*c*) The amount had been agreed on between the plaintiff and the company.

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decided by the Queen's Bench, before which Court the case went on appeal from the County Court, that he was entitled to recover.

III.—CHILDREN.

The legislature (*d*) has provided that children under three years of age accompanying passengers by "parliamentary" train are to be taken without any charge, and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger (*e*).

IV.—FARES.

In the Acts of Parliament incorporating railway companies, provision was usually made for the protection of the companies against being defrauded of their fares, and they were authorised to make bye-laws for the purpose of enforcing the regulations which they were empowered to make for the travelling upon their railways, &c. In 1840, an Act (*f*) for regulating railways was passed, its object being to provide for the due supervision of railways. It was thereby (*g*) provided (*inter alia*) that, as such bye-laws affect others than the servants of the companies, and that the powers of making them should

(*d*) 7 & 8 Vict. c. 85, s. 6.

(*e*) *Austin* v. *Gt. Western Rail. Co.*, L. R. 2 Q. B. 442; and see *post*, p. 50, note.

(*f*) 3 & 4 Vict. c. 97.

(*g*) Sect. 7.

be under proper control, copies of existing bye-laws should be laid before the Board of Trade (*h*), otherwise they should be void; and that no future bye-laws should be valid till two months after copies had been laid before the Board, which may disallow them, unless the Board before such period signify their approbation of them. The approval of the Board of Trade, however, does not prevent an enquiry as to the validity of a bye-law. The Board can only confer authority on a bye-law made in conformity to the statute authorising the making of bye-laws (*i*). In 1845 (*k*) the Railway Clauses Consolidation Act was passed, its object being to comprise in one general Act the provisions usually introduced into the Acts of Incorporation. By this Act it was provided as follows :—

> If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such

(*h*) Sect. 8.

(*i*) *The Queen* v. *Wood*, 5 Ell. & Bl. 49; *Chilton* v. *London and Croydon Rail. Co.*, 16 M. & W. 212.

(*k*) 8 & 9 Vict. c. 20.

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offence forfeit to the company a sum not exceeding forty shillings (*l*).

If any person be discovered, either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants, and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law (*m*).

It will be noticed that fraudulent intention is the gist and essential ingredient of the offence of travelling without having paid the fare or full fare (*n*).

By the same Act it is provided (*o*) that,

A list of all the tolls authorised by the special Act to be taken, and which shall be exacted by the company, shall be published by the same being painted upon one toll-board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

And it has been further provided by the Regulation of Railways Act, 1868 (*p*), that on and after the 1st of January, 1869,

(*l*) Sect. 103.
(*m*) Sect. 104.
(*n*) *Dearden* v. *Townsend*, L. R. 1 Q. B. 10.
(*o*) Sect. 93.
(*p*) 31 & 32 Vict. c. 119, s. 15.

Every company shall cause to be exhibited in a conspicuous place in the booking-office of each station on their line a list or lists painted, printed, or written in legible characters, containing the fares of passengers by the trains included in the time tables of the company from that station to every place for which passenger-tickets are there issued.

V.—BYE-LAWS FOR REGULATING TRAVELLING, ETC.

By the Railways Clauses Consolidation Act, 1845 (*q*), the companies were empowered from time to time, subject to the provisions of that and the special Act of the company, to make regulations (*inter alia*):

For preventing the smoking of tobacco, and the commission of any other nuisance in or upon the carriages, or in any of the stations or premises occupied by the company; and, generally, for regulating the travelling upon or using and working of the railway.

And for the better enforcing the observance of such regulations the companies are empowered, subject to the provisions of the Act of 1840 (*r*), to make bye-laws, which they may from time to time repeal or alter, or make others; but these, besides being reasonable, must not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of that Act, or of the Company's Special Act (*s*). Such

(*q*) 8 & 9 Vict. c. 20, ss. 108, 109; as to smoking see *post*, pp. 13, 15.

(*r*) 3 & 4 Vict. c. 97; *ante*, p. 6.

(*s*) *Chilton* v. *London and Croydon Rail. Co.*, 16 M. &

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bye-laws must be reduced into writing and have affixed to them the common seal of the company. Any person offending against any such bye-laws is liable to a penalty not exceeding £5 for every offence. And if the infraction or non-observance of any bye-law be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, the company may also summarily interfere to obviate or remove such danger, annoyance, or hindrance.

The bye-laws (*t*) when confirmed or allowed, according to the provisions of any Act in force regulating the allowance or confirmation of the same, must be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company. And such boards are to be renewed from time to time, otherwise no penalty shall be recoverable. And such bye-laws when so confirmed, published and affixed, are binding upon and to be observed by all parties, and shall be sufficient to justify all persons acting under the same.

A passenger was convicted in 1859 (*u*) before justices of a breach of a bye-law which prohibited the quitting of any carriage while the train was in

W. 230; *Williams* v. *Gt. Western Rail. Co.*, 10 Ex. 15; *Queen* v. *Frere*, 4 Ell. & Bl. 603; and Story on Bailments, s. 603*a*.

(*t*) 8 & 9 Vict. c. 20, ss. 110, 111; as to confirmation by Board of Trade, see *ante*, p. 7.

(*u*) *Motteram* v. *Eastern Counties Rail. Co.*, 7 C. B. N. S. 58 (Williams, J., dissenting).

motion. It was held by the Court of Common Pleas that it was sufficient for the railway company to prove that a copy of the bye-laws was affixed at the stations at which the passenger entered and quitted the train, without showing publication at every station on the line.

VI.—PENALTIES.

As in the case of bye-laws the company must publish short particulars of every offence (*x*), for which, any penalty is imposed by the Railways Clauses Consolidation Act, or the Company's Special Act, or any bye-law of the company, and the amount of penalty, by having them painted on a board, or printed upon paper and pasted thereon, and have such board hung up or fixed in some conspicuous part of the principal place of business of the company, and, where any such penalties are of local application, on some conspicuous place in the immediate neighbourhood; and such boards are to be renewed from time to time, otherwise no penalty shall be recoverable.

Any person pulling down, or injuring any board put up for the publication of any bye-law or penalty, or obliterating any of the letters or figures thereon, is liable to a penalty of £5, and to defray the expenses of restoring the same (*y*).

(*x*) 8 & 9 Vict. c. 20, s. 143.
(*y*) Sect. 144.

VII.—COMMUNICATION BETWEEN PASSENGERS AND GUARD.

By the Regulation of Railways Act, 1868 (*z*), further provision has been made by the legislature for the safety and comfort of passengers. It is enacted that every company shall provide and maintain in good working order, in every train worked by it which carries passengers, and travels more than twenty miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade may approve. The company is made liable to a penalty not exceeding £10 for each case of default, and any passenger using the means of communication without reasonable and sufficient cause, is made liable for each offence to a penalty not exceeding £5.

This Act applies to a train carrying passengers started with the intention of going for more than twenty miles without stopping, and not merely to a train having actually travelled over twenty miles without stopping (*a*). In case of accident to such train, the company having omitted to provide means of communication between the passengers and the servants of the company, it will be a question of fact whether the use of the precaution would have prevented the accident, in other words, whether

(*z*) 31 & 32 Vict. c. 119, s. 22.

(*a*) *Blamires* v. *Lancashire and Yorkshire Rail. Co.*, L. R. 8 Ex. 283.

the omission was negligence rendering the company liable to passengers for injuries sustained by the accident.

VIII.—SMOKING.

With regard to smoking, it is enacted (*b*), that all railway companies, except the Metropolitan Railway Company, shall, in every passenger train where there are more carriages than one of each class, provide smoking compartments for each class of passengers, unless exempted by the Board of Trade.

IX.—BYE-LAWS SANCTIONED BY BOARD OF TRADE.

The Board of Trade have issued the following form of bye-laws, which is adopted by most of the railway companies. Any variation from this form must have the sanction of the Board of Trade.

Bye-Laws and Regulations.

Made by the Railway Company, with the approval of the Board of Trade, for regulating the travelling upon and using of all railways belonging to, or leased to, the said company, and with respect to which that company have power to make bye-laws.

Obtaining ticket and delivering up the same.

No. 1. No passenger will be allowed to enter any carriage used on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which such ticket is issued. Every passenger shall show and deliver up his ticket (whether a contract or season

(*b*) 31 & 32 Vict. c. 119, s. 20.

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ticket, or otherwise) to any duly authorised servant of the company whenever required to do so for any purpose. Any passenger travelling without a ticket, or failing or refusing to show or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of his journey.

Using ticket for any other day.

No. 2. Any passenger using or attempting to use a ticket on any day for which such ticket is not available, or using a ticket which has been already used on a previous journey, is hereby subjected to a penalty not exceeding forty shillings.

Using ticket for any other station.

No. 3. Any passenger using or attempting to use a ticket for any other station than that for which it is available will be required to pay the difference between the sum actually paid and the fare between the stations from and to which the passenger has travelled, or, at the option of the company, the fare from the station to which he was booked to the end of the journey.

Defacing tickets.

No. 4. Any passenger wilfully altering or defacing his ticket so as to render the date, number, or any material portion thereof illegible, is hereby subjected to a penalty not exceeding forty shillings.

Sale and purchase of return tickets.

No. 5. A return ticket is granted solely for the purpose of enabling the person for whom the same is issued to travel therewith to and from the stations marked thereon, and is not transferable. Any person who sells, or attempts to sell, or parts or attempts to part with the possession of the return half of any return ticket in order to enable any other person to travel therewith, is hereby subjected to a penalty not exceeding forty shillings, and any person purchasing such half of a return ticket, or travelling or attempting to travel therewith, shall be liable to pay the fare which he would have been liable to pay for the single journey, and shall in addition thereto, be subjected to a penalty not exceeding forty shillings.

Tickets issued when there is room.

No. 6. At the intermediate stations the fares will only be accepted and the tickets issued, conditionally; that is to say, in case there shall be room in the train for which

the tickets are issued. In case there shall not be room for all the passengers to whom tickets have been issued, those to whom tickets have been issued for the longest distance shall (if reasonably practicable) have the preference; and those to whom tickets have been issued for the same distance shall (if reasonably practicable) have priority, according to the order in which tickets have been issued, as denoted by the consecutive numbers stamped upon them. The company will not, however, hold itself responsible for such order of preference or priority being adhered to, but the fare or difference of fare, if the passenger travel by an ordinary train in a class of carriage inferior to that for which he has a ticket, shall be immediately returned, on application, to any passenger for whom there is not room as aforesaid, if the application be made before the departure of the train.

Smoking.

No. 7. Every person smoking in any shed or covered platform of a station, or in any building of the company, or in any carriage or compartment of a carriage not specially provided for that purpose, is hereby subjected to a penalty not exceeding forty shillings. The company's officers and servants are required to take the necessary steps to enforce obedience to this bye-law; and any person offending against it is liable, in addition to incurring the penalty above mentioned, to be summarily removed, at the first opportunity, from the carriage or from the company's premises.

Using ticket for superior class.

No. 8. Any person travelling without the special permission of some duly authorised servant of the company in a carriage or by a train of a superior class to that for which his ticket was issued, is hereby subjected to a penalty not exceeding forty shillings; and shall in addition be liable to pay the fare according to the class of carriage in which he is travelling from the station whence the train originally started, unless he shows that he had no intent to defraud.

Being intoxicated or using

No. 9. Any person found in a carriage, or elsewhere upon the company's premises, in a state of intoxication, or using obscene or abusive language, or writing obscene or offensive

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obscene or abusive language, &c.

words on any part of the company's stations or carriages, or committing any nuisance, or otherwise wilfully interfering with the comfort of other passengers, is hereby subjected to a penalty not exceeding forty shillings, and shall immediately, or, if a passenger, at the first opportunity, be removed from the company's premises.

Damaging property.

No. 10. Any person who wilfully cuts or tears any lining or window strap, or curtain, removes or defaces any number plate, or breaks or scratches any window of a carriage used on the railway, or who otherwise, except by unavoidable accident, damages, defaces, or injures any such carriage, or any station, or other property of the company, is hereby subjected to a penalty not exceeding five pounds, in addition to the amount of any damage for which he may be liable.

Travelling on roof, steps, &c.

No. 11. No passenger shall be permitted to travel on the roof, steps, or footboard of any carriage, or on the engine, or in the guard's van, or any portion of any carriage not intended for the conveyance of passengers; and any passenger persisting in doing so, after being warned to desist by the guard in charge of the train, or any duly authorised servant of the company, is hereby subjected to a penalty not exceeding forty shillings, and shall be liable to be summarily removed from the company's premises.

Entering or leaving carriage when in motion.

No. 12. Any passenger entering or leaving, or attempting to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform, or other place appointed by the company for passengers to enter or leave the carriages, is hereby subjected to a penalty not exceeding forty shillings.

Entering full carriage.

No. 13. Any passenger persisting in entering a carriage or compartment of a carriage containing the full number of persons which it is constructed to convey, when any such person objects to his so entering the carriage or compartment, is hereby subjected to a penalty not exceeding forty shillings.

Conveyance of

No. 14. Dogs and other animals will not be suffered to accompany passengers in the carriages, but will be conveyed

separately, and charged for; and any person taking a dog or other animal with him into any passenger carriage used on the railway is hereby subjected to a penalty not exceeding forty shillings. Dogs in carriages.

No. 15. Loaded firearms are on no account to be taken into or placed upon any carriage, waggon, truck, or other vehicle forming or intended to form a train, or any portion of a train, on the railway, or to be brought to the station or on to the premises of the company, and every person so offending is hereby subjected to a penalty not exceeding five pounds. Taking loaded firearms.

No. 16. The company may refuse to carry any person who has any infectious disorder. If any person who has any such disorder is found upon the premises of the company, or travels or attempts to travel on the railway of the company, without the special permission of the company, he shall be liable to a penalty not exceeding forty shillings in addition to the forfeiture of any fare which he may have paid, and may be removed at the first opportunity from the company's premises. Any person who has charge of any person suffering from an infectious disorder while upon the premises of the company, or travelling or attempting to travel on the railway, or who aids or assists any person suffering from such disorder, in being upon the premises of the company, or travelling or attempting to travel on the railway, shall be liable to a penalty not exceeding forty shillings, unless the person suffering from such disorder be travelling with the special permission of the company. Travelling with infectious disorder.

No. 17. Every driver or conductor of an omnibus, cab, carriage, or other vehicle shall, while in or upon any station yard or other premises of the company, obey the reasonable directions of the company's officers and servants duly authorised in that behalf; and every person offending against this regulation is hereby subjected to a penalty not exceeding forty shillings. Omnibuses, &c., drivers obeying servants of company.

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Given under the common seal of the Railway Company, the day of 18 .

Seal of the Company.

Secretary of the Company.

The Board of Trade hereby signify their allowance and approval of the above Bye-laws and Regulations.

Signed by order of the Board of Trade the day of 18 .

Assistant-Secretary to the Board of Trade.

X.—CASES ARISING UNDER BYE-LAWS.

The London and Croydon Railway Company (*c*), which was incorporated by 5 Will. IV. c. x, made the following bye-law, which was duly approved and published :—

No passenger will be allowed to take his seat in or upon any of the company's carriages, or to travel therein upon the said railway, without having first booked his place and paid his fare. Each passenger booking his place will be furnished with a ticket, which he is to show when required by the guard in charge of the train, and to deliver up, before leaving the company's premises, upon demand, to the guard or other servant of the company duly authorised to collect tickets. Each passenger not producing or delivering up his ticket will be required *to pay the fare from the place where the train originally started.*

(*c*) *Chilton* v. *The London and Croydon Rail. Co.*, 16 M. & W. 212.

The first-class fare from Croydon, from which place the train originally started, to London, was 1*s.* 3*d.* Chilton entered the train at Sydenham, having taken his ticket by the first-class and paid the fare, 1*s.*, but he accidentally lost his ticket. On arrival at London, he offered to pay 1*s.*, but 1*s.* 3*d.* was demanded from him, and on his refusal to pay more than 1*s.* he was arrested. It was decided by the Court of Exchequer (1847) that the sum demanded was a fare, and not a penalty for the breach of a bye-law; and to authorise an arrest there must have been an offence against the Company's Act, and not merely the breach of a bye-law.

The Lancashire and Yorkshire Railway Company (*d*) made and published a similar bye-law in almost the same words. One of their lines runs from Salford to Newchurch, and between Salford and Newchurch is the Ewood Bridge station, and from this station the company were in the habit of issuing return tickets at reduced fares to Salford and back. Mr. Townsend, a gentleman, residing at Horne, in Rossendale, on the 29th of October, 1864, took at Ewood Bridge a first-class return ticket thence to Salford and back. He travelled to Salford, and on the return journey, instead of getting out at Ewood Bridge, proceeded, in company with a friend, to Newchurch. No demand was made upon him at Ewood Bridge for any ticket; on arrival at Newchurch, he gave up his return ticket from Salford to Ewood Bridge, and tendered in addition the full

(*d*) *Dearden* v. *Townsend*, L. R. 1 Q. B. 10.

CHAP. II. local first-class fare from Ewood Bridge to Newchurch, but this was refused, and the fare from Salford demanded. This he refused to pay, and an information was therefore preferred against him on the ground that he did not, on being required so to do, produce and deliver up on demand his ticket as a passenger from Ewood Bridge to Newchurch, nor pay the fare from Salford, whence the train originally started, on being required so to do. The Court of Queen's Bench held that the justices had rightly dismissed the information. The case did not come within the terms of the bye-law, and had the bye-law been applicable to the case it would have been contrary to the statute (8 & 9 Vict. c. 20, s. 103) by making it an offence to travel without a ticket, irrespective of the intention to defraud, and consequently the bye-law would have been illegal and void (*e*). Mr. Townsend was not travelling without a ticket with the intention of evading payment.

A similar bye-law was made by the Great Northern Railway Company (*f*). On the 25th February, 1865, Jennings, an owner and trainer of race-horses, was desirous of proceeding with some horses from Lincoln to Peterborough by the six o'clock evening train. He took a first-class ticket for himself, three third-class tickets for three boys who attended on the horses, and a ticket for the three horses. The boys were to travel in the horse-

(*e*) See, *ante*, p. 8.

(*f*) *Jennings* v. *The Gt. Northern Rail. Co.*, L. R. 1 Q. B. 7.

boxes with the horses. The six o'clock train was one which conveyed both passengers and horses, and being considered by the company's servants too long to be safe, it was divided into two; the first train consisted of the carriages with passengers, and the other of horse-boxes only. Jennings travelled by the first train, taking with him, as well as his own ticket, the tickets for the boys and for the horses. After the departure of the first train, the boys were asked to produce their tickets, and being unable to do so, were prevented from proceeding with the horses. Jennings sued the company for breach of contract for not carrying his servants, and obtained a verdict for £5 12*s.*, which the Court of Queen's Bench refused to disturb.

Cockburn, C. J., said:—"The bye-law is established for the protection of the company, and, to avail themselves of it, they must keep strictly within its provisions. Here they do not do so; they delivered the tickets to the master, and are not in a position to enforce the bye-law, by requiring the boys to produce the tickets. The company entered into a contract, not with the boys, but with their master, and he was entitled to have the boys carried as passengers to Peterborough. The company have broken that contract, and they must take the consequences of their act."

On the 13th of May, 1853 (*g*), Mr. Frere (a gentleman residing at Rawdon Hall in Norfolk, within about two miles of Diss station) being at Colchester

(*g*) *The Queen* v. *Frere*, 4 Ell. & Bl. 598.

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and about to proceed to his home, and intending to travel by the Eastern Union Railway to Diss, took a second-class ticket to Norwich. This he did purposely. The fare was 5*s.* only, but the fare to Diss, which was nineteen miles nearer to Colchester, was 7*s.*, and this was stated on a printed table of fares posted up in a conspicuous part of the Colchester station. On giving up his ticket after leaving the carriage at Diss, the collector demanded the additional 2*s.*, and as Mr. Frere declined to pay, he was summoned before the justices and was fined 10*s.*, for having unlawfully and wilfully entered a carriage for the purpose of travelling from Colchester to Diss, not having previously paid his fare, contrary to the bye-laws of the company. The bye-law declared:

> Any passenger who shall enter a carriage without having previously paid his fare, or who shall refuse to show or deliver up his ticket, when required so to do, is hereby subjected to a penalty not exceeding 40*s.* for such entry or refusal.

On appeal the conviction was quashed, the Court of Queen's Bench holding that there had been no violation of the bye-law. Lord Campbell, C.J., said, "Mr. Frere had paid all that the ticket required, and all that was asked of him" (*h*).

(*h*) An unsuccessful attempt was made in 1840 (*Att.-Gen.* v. *The Birmingham and Derby Junction Rail. Co.*, 2 Rail. & Canal Cas. 124), to obtain from the Court of Chancery an injunction restraining the Birmingham and Derby Junction

Two actions were brought against the Great Western Railway Company by passengers for loss of luggage, one in 1851, the other in 1854. The company on each occasion set up in answer to the action their following bye-law :—

Every first-class passenger will be allowed 112 lbs., and every second-class passenger 56 lbs. free of charge ; *but the company will not be answerable for the care of the same, unless booked and paid for accordingly.*

In the first case (*i*) no evidence was given on

Rail. Co. from charging a different rate of fare to passengers on their line between Derby and Hampton-in-Arden, according as they were conveyed the whole distance to or from London or not. The ordinary first-class fare between Derby and Hampton-in-Arden was 8*s*, but passengers for the whole distance to or from London were charged at the rate of 2*s*., the object being to attract the traffic viâ Hampton-in-Arden. It was enacted by the 63rd section of the Company's special Act, that the authorised charges for the carriage of any passengers, goods, &c., by the company, shall be at all times charged equally and after the same rate per mile in respect of all passengers, &c., and conveyed or propelled by a like carriage or engine, passing on the same portion of the line only, and under the same circumstances ; and no reduction or advance in any charge for conveyance by the company, &c., shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the same portion of the railway only, and under the same circumstances. The Lord Chancellor was of opinion that the section had no reference to the case. Its object was to give an equal right to the public to the conveyance, that the company should not be at liberty to carry one and refuse another ; not to prevent the company from making such arrangements within the powers of their Act as they might find most convenient to themselves.

(*i*) *Gt. Western Rail. Co.* v. *Goodman*, 12 C. B. 313.

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the part of the company of any arrangements made by them for booking the luggage of passengers. The plaintiff did not book her luggage, or any part of it, or pay anything to the company in respect of it, nor was it shown that she had any notice of the bye-law. The luggage taken with her was within the limit allowed. The County Court Judge gave a verdict for the plaintiff for £35 14*s.* 3*d.*, the admitted value of the box and its contents; and an appeal by the company to the Court of Common Pleas was dismissed.

In the latter case (*k*), the plaintiff replied that his lost portmanteau with the articles therein did not exceed forty pounds in weight and four cubic feet in dimensions, and that he was entitled to have the same carried without extra charge under the provisions of the 169th section of the company's Act of Incorporation (5 & 6 Will. IV. c. cvii.); and therefore the company were responsible to him as common carriers.

By the 169th section it was enacted :—

> That without extra charge it shall be lawful for every passenger, travelling along or upon the railway, to take with him his articles of clothing, not exceeding 40 lbs. in weight, and four cubic feet in dimensions; and the company shall in no case be in any way liable or responsible for the safe carriage or custody of, or for any loss or injury to any articles, matters, or things whatsoever carried upon or along the railway, with or accompanying the person, of or

(*k*) *Williams* v. *Gt. Western Rail. Co.*, 10 Ex. 15.

belonging to any passenger, or delivered for the purpose of being carried, other than and except such passenger's articles of clothing, not exceeding the weight and dimensions aforesaid. CHAP. II.

The Court of Exchequer held that the bye-law was clearly bad, as contravening the 169th section. The plaintiff accordingly obtained judgment for £20, the value of his lost luggage.

XI.—PASSENGERS NOT TO CARRY DANGEROUS GOODS.

By the Railways Clauses Consolidation Act, 1845 (*l*), it is enacted that no person shall be entitled to carry, or to require the company to carry upon the railway, any aqua fortis, oil of vitriol, gunpowder, lucifer-matches, or any other goods which in the judgment of the company may be of a dangerous nature. And the company may refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact. By the Carriage and Deposit of Dangerous Goods Act, 1866 (*m*), any person carrying "specially dangerous goods" upon a railway without the true name or description of such goods, with the addition of the words "specially dangerous" distinctly written, printed, or marked on the outside of the package, is liable to a penalty of £500, or imprisonment, with or without hard labour, for two years.

(*l*) 8 & 9 Vict. c. 20, s. 105.
(*m*) 29 & 30 Vict. c. 69, s. 3.

XII.—PERSONS OBSTRUCTING THE OFFICERS OF THE RAILWAY COMPANY.

It was enacted by the Regulation of Railways Act, 1840 (*n*), that if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty, every person so offending, and all others aiding or assisting therein, may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until he can conveniently be taken before a justice, and shall in the discretion of such justice forfeit a sum not exceeding £5, and in default of payment be imprisoned for a term not exceeding two calendar months.

XIII.—TRESPASSES ON RAILWAYS.

The Legislature (*o*) has imposed a penalty not exceeding forty shillings for every offence on any person who shall be or pass upon any railway, except for the purpose of crossing the same at an authorised crossing, after having once received warning not to pass thereon.

XIV.—TRANSIENT OFFENDERS.

Any officer or agent of the company, and all persons called by him to his assistance, may seize and detain any person who has offended against the

(*n*) 3 & 4 Vict. c. 97, s. 16.

(*o*) 31 & 32 Vict. c. 119, s. 23; and 34 & 35 Vict. c. 78 s. 14.

provisions of the Railways Clauses Consolidation Act, 1845, or the special Act of the company, and whose name and residence is unknown to the officer or agent, and convey him with all convenient despatch before some justice, without any warrant or other authority (*p*).

The authority to seize and detain given by this section only applies to offences against the Railways Clauses Consolidation Act, or the special Act of the company, and does not extend to breaches of any bye-law of the company (*q*).

XV.—LIABILITY OF COMPANY FOR WRONGFUL ARREST BY COMPANY'S SERVANTS.

In case of a wrongful arrest of any person it has been determined (*r*), on the principle that a master is not liable for the wrongful act of his servant, unless that act be done either by an authority, expressed or implied, given him for that purpose by the master, that a railway company is liable in an action for false imprisonment by one of its officers or servants, only if that imprisonment be committed by the authority of the company. It is a question of fact whether the persons who actually imprisoned the plaintiff, or some of them, had authority from the company to do so.

(*p*) 8 & 9 Vict. c. 20, s. 154.

(*q*) *Chilton* v. *London and Croydon Rail. Co.*, 16 M. & W. 231.

(*r*) *Roe* v. *Birkenhead, &c., Rail. Co.*, 7 Ex. 40.

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In a case against the Great Northern Railway Company, it appeared on the trial that the plaintiff on Saturday, the 10th March, 1860, took a return ticket by the Great Northern Railway to Wood Green and back to London. The ticket was available for his return on Monday. On arrival at home, at Wood Green, he placed the half-ticket on the chimney-piece. It happened that his wife's sister had on the previous Thursday come to visit her sister, with a return-ticket available for that day, and had placed the half of her ticket on the same chimney-piece. As, however, she stayed over Thursday, when she went away, she did not take her ticket, and so the plaintiff, on Monday, put it in his pocket by mistake for his own, and gave it up, supposing it to be his own ticket, on arrival at King's Cross. He was arrested and charged with travelling without having paid his fare. The jury found that the superintendent of the line who had directed or sanctioned the arrest, had such authority; upon evidence that the ticket-collectors, and the ticket clerk, and the police, and all the persons acting for the company, went to his office and referred to him as a superior authority; and the verdict was upheld by the Court of Queen's Bench (*s*).

So in another case, in 1872, against the Metropolitan Railway Company (*t*). The plaintiff was

(*s*) *Goff* v. *Gt. Northern Rail. Co.*, 30 L. J. Q. B. 148.
(*t*) *Moore* v. *Metropolitan Rail. Co.*, L. R. 8 Q. B. 36.

travelling with a return-ticket from Moorgate Street to Notting Hill. When the train arrived at the Edgware Road station on the way to Notting Hill, the plaintiff got out, but the ticket collector told him that the return-ticket he had was not available for that station, and demanded a fare of 2*d.* The plaintiff refused to pay, and afterwards offered to pay on a receipt being given to him; this the ticket-collector declined to do, and called an inspector, who sent for a policeman and gave the plaintiff into custody. He was taken to the police-station and charged before a magistrate the next day with refusing to give up his ticket or pay his fare, thereby defrauding the company. The magistrate dismissed the case. It was held that there was evidence that the person who gave the plaintiff into custody was acting with the authority of the railway company. It was said in that case, by Blackburn, J., "Where a railway company are carrying on business there are certain things which are necessary to be done for the carrying on of the business, and the protection of the company, and there are things which if done at all must be done at once, therefore the company must have some person on the spot to do these things, a person acting with common prudence and common sense, clothed with authority to decide as the exigency arises what shall be done. If such person, intending to exercise his authority, makes a mistake, and does an act which cannot be justified, the company are responsible, because he was their agent. Where

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there is a necessity to have a person on the spot to act in an emergency, and to determine whether certain things shall or shall not be done, the fact that there is a person on the spot who is acting as if he had express authority, is *primâ facie* evidence that he had authority, and the presumption must be rebutted by the company."

"It is to be presumed," said Lush, J., "that the inspector had authority from the company to exercise for their benefit the powers conferred upon them by ss. 103 & 104, of 8 and 9 Vict. c. 20. The inspector supposed that the ticket authorised the plaintiff to get out at Notting Hill only, and not at Edgware Road, and that therefore the plaintiff had ridden from Moorgate Street to Edgware Road without any ticket authorising him to take that journey. The inspector thought, erroneously, that this was done with a fraudulent intent, and intending to act under the 103rd and 104th sections, he gave the plaintiff into custody. I think that in the absence of evidence to the contrary, it is to be inferred that the inspector had authority to arrest for offences under these sections."

So also in another case in 1873 (*u*), the Manchester, Sheffield, and Lincolnshire Railway Company were held liable for injuries caused to a passenger by a porter violently pulling him out of a carriage just as the train was moving off, in the

(*u*) *Bayley* v. *Manchester, Sheffield, &c., Rail. Co.*, L. R. 7 C. P. 415; L. R. 8 C. P. 148.

mistaken belief that he was in the wrong train. It was proved to be the duty of the porters to prevent passengers going by wrong trains, as far as they were able to do so, but not to remove them from the train or carriage, and they were generally directed to do all in their power to promote the comfort of the passengers and the interests of the company. It was held that the porter, though he blundered, acted within the scope of his employment, and, therefore, the company was liable, on the principle that where a servant is acting within the scope of his employment, and in so acting does something negligent or wrongful, the employer is liable, even though the acts done may be the very reverse of that which the servant was directed to do.

On the other hand, in 1867 (*x*), a passenger failed in an action for false imprisonment against the London and South-Western Railway Company, their servant not having acted within the scope of his authority. A station master arrested the plaintiff at his destination on the mistaken assumption that he had wrongfully brought a horse by the train without paying for it. The Act of Parliament (8 & 9 Vict. c. 20, ss. 103, 104) enacts that where a passenger, with a fraudulent intent, does not pay his fare, he may be taken into custody, and that

(*x*) *Poulton* v. *London and South-Western Rail. Co.*, L. R. 2 Q. B. 534; and see *Edwards* v. *London and North Western Railway Co.*, L. R. 5 C. P. 445, and *Allen* v. *London and South Western Rail. Co.*, L. R. 6 Q. B. 65.

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where goods are not paid for they may be detained. Even if there had been anything to pay in respect of the horse, the company could not have authorised the station-master to arrest the plaintiff; they had no power to do it themselves. The plaintiff's remedy was against the station-master only.

CHAPTER III.

I.—LIABILITY OF RAILWAY COMPANIES AS CARRIERS OF PASSENGERS.

It is enacted by the Railways Clauses Consolidation Act, 1845 (*a*) :—

> Nothing in this or the Special Act contained shall extend to charge or make liable the company further, or in any other case, than where, according to the laws of the realm, stage-coach proprietors and common carriers would be liable, nor shall extend in any degree to deprive the company of any protection or privilege which common carriers or stage-coach proprietors may be entitled to; but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege (*b*).

The liability of railway companies as carriers of passengers has been decided to be the same as that of stage-coach proprietors, but their liability for the luggage of passengers that of common carriers. "It has been a matter of some controversy," says Judge Story, "in what character the proprietors of stage-coaches, and steam-boats, and rail-cars are to be regarded. In regard to the persons of passengers, it is now clear, that they are not to be deemed common carriers, so as to be

(*a*) 8 & 9 Vict. c. 20. (*b*) Sect. 89.

CHAP. III. liable for all injuries and damages, from which, as common carriers, they would not be excused" (*c*).

"Attempts have been made to extend their responsibility as to the persons of passengers to all losses and injuries, except those arising from the act of God, or from the public enemies. But the support of this doctrine has been uniformly resisted by the Courts, although a strict responsibility as to the carriage of the persons of passengers is imposed upon such carriers" (*d*).

II.—FROM WHAT DOES LIABILITY ARISE.

The liability of the company does not arise from its special Act (*e*), hence no notice of action is necessary; and it has been laid down by some eminent judges that it is independent of any contract between the passenger and the company; the law implying a duty on the part of the company to carry him safely (*f*). Accordingly (in 1854) a reporter of *Bell's Life* newspaper carried gratuitously by the Great Northern recovered damages against the company for injuries sustained while so travelling (*g*). In another case (*h*),

(*c*) Story on Bailments, s. 499.

(*d*) Ib., s. 590.

(*e*) *Carpue* v. *London and Brighton Rail. Co.*, 5 Q. B. 747.

(*f*) *Marshall* v. *York, Newcastle, and Berwick Rail. Co.*, 11 C. B. 662.

(*g*) *Gt. Northern Rail. Co.* v. *Harrison*, 10 Ex. 376; but see *per* Willes, J., in *Alton* v. *Midland Rail. Co.*, 19 C. B. N. S. 221.

(*h*) *Austin* v. *Gt. Western Rail. Co.*, L. R. 2 Q. B. 442, *per* Blackburn, J., p. 446; but see *per* Lush, J., 447.

in 1867, damages were recovered against the Great Western Railway Company in respect of injuries to a child three years and two months old, while travelling in a parliamentary train with his mother who had omitted to take a ticket for him.

Other eminent judges, however, have laid down that the duty arises out of a contract between the company and the passenger, and therefore an action would not lie by a master for injuries to his servant while travelling on the company's line, whereby he lost the benefit of the services of the servant (*i*).

III.—LIMITATION OF COMPANY'S LIABILITY.

By a special contract a company may relieve itself of all liability for damages, though not of any liability which may be incurred as to criminal proceedings. Thus it is customary to allow drovers accompanying cattle to travel gratis on the terms that they should travel at their own risk. Such stipulation, it has been held, frees the company from all liability to damages for any negligence for which it would otherwise have been liable; and it covers not only the transit along the whole line of railway for which the ticket or pass is given, but also the access to and departure from

(*i*) *Alton* v. *Midland Rail. Co.*, 19 C. B. N. S. 213; but see *Marshall* v. *York, Newcastle, &c., Rail. Co.*, 11 C. B. 655, where it was held that a servant could recover for loss of his luggage, though the master, with whom he was travelling at the time, paid the fare.

CHAP. III. the railway, all that takes place while the person is a passenger (*k*).

Also by their special Act many railway companies are now bound to run cheap trains for the working classes. In such case their liability under any claim to compensation for injury to a passenger is limited to a sum not exceeding £100, and provision is made for determination of the amount payable by an arbitrator to be appointed by the Board of Trade, and not otherwise.

But the question arises, can a railway company relieve itself of liability for the safe carrying of ordinary passengers, for instance by a condition on the ticket or in the time-tables referred to on the ticket?

A case (*l*) recently came before the House of Lords on appeal from Scotland which will help to answer this. That was a case of a passenger by a steam-packet company. Lieutenant Stevenson purchased at the office of the owners of the *Countess of Eglinton* steamer, a ticket for his passage from Dublin to Whitehaven, and went immediately on board. The ship was wrecked off the Isle of Man through the fault of those in charge.

(*k*) *McCawley* v. *Furness Rail. Co.*, L. R. 8 Q. B. 57; *Hall* v. *N.-Eastern Rail. Co.*, L. R. 10 Q. B. 437; *Gallin* v. *London and N.-Western Rail. Co.*, L. R. 10 Q. B. 212; and see *Stewart* v. *London and N.-Western Rail. Co.*, 33 L. J. Ex. 199.

(*l*) *Henderson* v. *Stevenson*, L. R. 2 Sc. A. 470. See *Harris* v. *Gt. Western Rail. Co.*, L. R. 1 Q. B. D. 515; and *contra*, *Parker* v. *South Eastern Rail. Co.*, L. R. 1 C. P. D. 618.

Lieutenant Stevenson got ashore, and found refuge in a peasant's hut, suffering great personal inconvenience and losing his luggage. He brought an action against the owners. They denied responsibility on the ground that on the back of the ticket was printed — "The company incurs no liability in respect of loss, injury, or delay to the passenger or to his luggage, whether arising from the act, neglect, or default of the company or their servants, or otherwise." The ticket on the face of it had only the words, "Dublin to Whitehaven." In the office there was hung up a notice that "the passengers, and owners of the passengers' luggage, &c., should undertake all risks whatsoever." It was not shown that Lieutenant Stevenson's attention was called either to the notice in the office or on the back of the ticket, or that he knew either of the one or the other. Under these circumstances the owners were held liable. Speaking of the liability of the company as carriers of passengers, Lord Chelmsford said (*n*): "Their liability by law to a passenger is to carry and convey him with reasonable care and diligence, which implies the absence on the part of the company of carelessness or negligence. Of course any person may enter into an express contract with them to dispense with this obligation, and to take the whole risk of the voyage on himself. And this contract may be established by a notice excluding liability for the want of care or for negligence, or even for the

(*n*) L. R. 2 Sc. A., 476–7.

CHAP. III. wilful misconduct of the company's servants, if assented to by the passenger. But by a mere notice, without such assent, they can have no right to discharge themselves from performing what is the very essence of their duty, which is to carry safely and securely, unless prevented by unavoidable accidents. I think that such an exclusion of liability for negligence cannot be established without very clear evidence of the notice having been brought to the knowledge of the passenger and of his having expressly assented to it. The mere delivery of a ticket with the conditions endorsed upon it is very far, in my opinion, from conclusively binding the passenger."

The provisions of the Merchant Shipping Acts, limiting the liability of shipowners in respect of personal injury or loss of life to a sum proportioned to the ship's tonnage, apply also to railway companies carrying partly by rail, partly on board ship—for instance, from London to Guernsey—in case of personal injury or loss of life on board ship (*o*).

IV.—ACTION FOUNDED IN NEGLIGENCE.

An action by a passenger against a railway company in respect of injuries is founded entirely in negligence. The company do not warrant the safety of the passengers; their undertaking or

(*o*) *London and South-Western Rail Co.* v. *James*, L. R. 8 Ch. Ap. 241, and see 17 & 18 Vict. c. 104, s. 514, 25 & 26 Vict. c. 63, s. 54.

obligation as to them is that, as far as human care (including in that term skill and foresight) can go, they will provide for their safe conveyance (*p*). Their duty or contract is that all persons connected with the carrying and with the means and appliances of the carrying, with the carriages, the road, the signalling, and otherwise, shall use care and diligence, so that no accident shall happen (*q*). It is always a question whether the mischief could have been reasonably foreseen (*r*). But when everything has been done that human prudence can suggest for the security of the passengers, an accident may happen, in which case the company would not be liable (*s*).

In accordance with the above principles it has been held that railway companies do not warrant the roadworthiness of carriages supplied by them against latent defects (*t*); their obligation or warranty extends however, it seems, to everything

(*p*) *Aston* v. *Heaven*, 2 Esp. 533; *Christie* v. *Griggs*, 2 Camp. 79; *Redhead* v. *Midland Counties Rail. Co.*, L. R. 4 Q. B. 381.

(*q*) *Per* Bramwell, B., *Wright* v. *Midland Rail. Co.*, L. R. 8 Ex. 140.

(*r*) *Cornman* v. *Eastern Counties Rail. Co.*, 4 H. & N. 786.

(*s*) *Crofts* v. *Waterhouse*, 3 Bing. 321.

(*t*) *Redhead* v. *Midland Rail. Co.*, L. R. 4 Q. B. 379, where the accident was caused by the breaking of the tyre of one of the wheels of the carriage, owing to a latent defect in the tyre which was not attributable to any fault on the part of the manufacturer, and could not be detected previously to the breaking. In *Stokes* v. *E. Counties Rail. Co.*, 2 F. & F. 691, the tyre of the near wheel of the engine broke from a flaw in the welding.

CHAP. III. except latent defects which could not by any reasonable diligence or skill be discovered (*x*).

Nor does a railway company warrant to its passengers that no cattle should come on to the line. Railway companies are not under a statutory duty as regards passengers to maintain all necessary fences so as effectually to restrain cattle from escaping from the adjoining fields on to the railway. Railway companies are only bound to take every reasonable care to prevent danger to their passengers from cattle coming on to the line in those places where it is probable that such an event may occur (*y*).

V.—RESPONSIBILITY NOT CONFINED TO TRANSIT.

The responsibility of a railway company is not confined to the transit, but they are bound to provide for the public whom they invite to travel by their line means of access to, and egress from, their carriages and stations, which can be used without danger (*z*). Their duty is to take reasonable care to keep their premises in such a state as that those whom they invite to come there shall

(*x*) *Francis* v. *Cockrell*, L. R. 5 Q. B. 501; *Kopitoff* v. *Wilson*, L. R. 1 Q. B. D. 383. For instance of alleged negligence in allowing an unsound truck to travel on the line without due examination, see *Richardson* v. *Gt. Eastern Rail. Co.*, L. R. 10 C. P. 486; reversed on appeal, L. R. 1 C. P. D. 342.

(*y*) *Buxton* v. *North-Eastern Rail. Co.*, L. R. 3 Q. B. 549. (*Per* Blackburn and Lush, JJ., on construction of 8 & 9 Vict. c. 20, s. 68; *contra*, Kelly, C.B., at N. P.—Lush, J., thought there should be an opportunity of appealing; but the parties came to terms.)

(*z*) *Bridges* v. *North London Rail. Co.*, L. R. 6 Q. B. 382, S. C. L. R. 7 H. of L. 213.

not be unduly exposed to danger (*a*). A person, who invites another to come on his premises, undertakes with regard to that person a duty to take reasonable care that the premises upon which he invites the person to come, the approach to the premises, as well as the exit, shall be in such a state as not to expose the person using them in consequence of the invitation to undue or unreasonable danger. That is the implied engagement of the company to any passenger who comes on the premises (*b*).

VI.—DANGEROUS WORKS CARRIED ON OVER RAILWAY, NOT FOR RAILWAY COMPANY.

There is no general obligation on a railway company to provide against a possible danger

(*a*) *Welfare* v. *Brighton Rail. Co.*, L. R. 4 Q. B. 699 ; and see *Daniel* v. *Metropolitan Rail. Co.*, L. R. 5 E. & I. Ap. 45.

(*b*) *Gallin* v. *London and North-Western Rail. Co.*, L. R. 10 Q. B. 215.—See *Shepherd* v. *Midland Rail. Co.*, 20 W. R. 705, where the accident happened by reason of a strip of ice, nearly an inch thick, extending half-way across the platform ; *Hogan* v. *South-Eastern Rail. Co.*, 28 L. T. N. S. 271, where the accident was caused by the pressure of the crowd ; and *Longmore* v. *Gt. Western Rail. Co.*, 19 C. B. N. S. 183, where death was caused by falling through a dangerous aperture left at the side of the stairs of a bridge used by passengers crossing from one platform to another. On the other hand, see *Crafter* v. *Metropolitan Rail. Co.*, L. R. 1 C. P. 300, where the injury was caused by falling on a staircase leading from the station to a highway ; the stairs were edged with brass, which had worn slippery, and there was no hand-rail, but a wall on each side of the staircase, which was about six feet wide ; and *Smith* v. *Great Eastern Rail. Co.*, L. R. 2 C. P. 4, where the plaintiff was bitten by a stray dog at a station while waiting for a train.

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which may arise from the negligent performance of a dangerous work which is being carried on over a railway, not for the railway company, but for other persons, and for the proper execution of which work the company is in no way responsible, though there may be circumstances of imminent danger within the knowledge of the directors of a company which may render them liable if they run into it, and thereby occasion resulting injury to a passenger. Contractors for the corporation of the City of London, in execution of certain works, were placing iron girders across the retaining walls of the Metropolitan Railway. Several had been safely put in their places by manual labour, but it was attempted to move one to its place by a donkey-engine, which acting not by a continuous and smooth movement but by jerks, carried the girder beyond its balance and it fell on a passing train and killed three passengers and injured the plaintiff. The railway company had no control over the works. It was held that the company were not liable. The persons whose duty it was to take precautions were the persons by whom the work was being carried on; and though the defendants, as reasonable persons, must have known that girders, if negligently handled, are likely to fall, they could have no reason to suppose that the persons who were doing the work would do it so negligently as to hazard the happening of such a result (*c*).

(*c*) *Daniel* v. *Metropolitan Rail. Co.*, L. R. 5 E. & I. Ap. 45.

VII. — PROOF OF CIRCUMSTANCES FROM WHICH NEGLIGENCE MAY BE INFERRED.

To recover damages against a railway company, a plaintiff must give evidence of circumstances from which it may be reasonably and properly concluded that there was negligence on the part of the company; and generally it is not sufficient for this purpose to prove merely the occurrence of an accident (*d*). But each case must depend on its own merits (*e*). There may be cases in which it having been shown that the exclusive management, both of the machinery and the railway, was in the hands of the company, it is presumable that the accident arose from their want of care, unless they give some explanation of the cause by which it was produced(*f*); and similarly where two trains, both belonging to the same company, have come

(*d*) *Toomey* v. *London, Brighton, and South-Coast Rail. Co.*, 3 C. B. N. S. 150; *Cornman* v. *Eastern Counties Rail. Co.*, 4 H. & N. 786; *Daniel* v. *Metropolitan Rail. Co.*, L. R. 5 E. & I. A. 45; *Hanson* v. *Lancashire and Yorkshire Rail. Co.*, 20 W. R. 297; *Welfare* v. *Brighton Rail. Co.*, L. R. 4 Q. B. 693.

(*e*) *Burke* v. *Manchester, &c., Rail. Co.*, 18 W. R. 694. As to what is for the judge and what for the jury in these cases, see *per* Brett, J., in *Bridges* v. *North London Rail. Co.*, L. R. 7 H. of L. Cas. 230.

(*f*) *Carpue* v. *London and Brighton Rail. Co.*, 5 Q. B. 751; *Shepherd* v. *Midland Rail. Co.*, 20 W. R. 705; and see *per* Lord Chelmsford in *Gt. Western Rail. Co. of Canada* v. *Fawcett*, 1 Moore's P. C. (N. S.) 101, and 9 Jur. (N. S.) 339; and, contra, *per* Willes, J., in *Longmore* v. *Gt. Western Rail. Co.*, 19 C. B. N. S. 183.

CHAP. III. into collision upon their own line (*g*); in such cases it may be said that the accident is such as in the ordinary course does not happen if those who have the management use proper care, and therefore the mere happening of the accident affords reasonable evidence, in the absence of explanation, that it arose from want of care—*res ipsa loquitur* (*h*). The mere adoption of a new plan by a railway company in order to prevent the recurrence of an accident is not evidence against the company of previous negligence (*i*).

VIII.—ACCIDENT ON LINE OTHER THAN THAT OF COMPANY BY WHICH THE PASSENGER IS BOOKED.

Cases frequently occur of an accident, not on the line of the company by which the passenger is being carried, but on the line of another company, over which the former company has "running powers" (*k*) on payment of certain tolls, or by arrangement between the different companies, the fares being apportioned between them; or of an accident on the company's own line, another company having running powers over it. Or it may be, not on the line of the company by whom the ticket was issued, but on the line of another company in another company's train.

(*g*) *Skinner* v. *London, Brighton, &c., Rail. Co.*, 5 Ex. 787.

(*h*) *Scott* v. *London Dock Co.*, 13 W. R. 410; *Burke* v. *Manchester, &c., Rail. Co.*, 18 W. R. 694.

(*i*) *Hart* v. *Lancashire and Yorkshire Rail. Co.*, 21 L. T. N. S. 261.

(*k*) See s. 92 of 8 & 9 Vict. c. 20.

In the former cases the company receiving the fare will be liable for injuries to passengers where the accident is the result of negligence in something connected with the management of the railway, as to which the other company as regards its line is their agent; but not when the accident is not the direct effect of defective regulations for the management, not of any act to which the company were parties, or of the neglect of any person whose services they use, but of the neglect of some persons over whom they have no control whatever, and of whose services they do not make use (*l*).

Thus, a passenger booked by the Great Western Railway Company from Paddington to Milford, in 1859, recovered damages against that company for injuries sustained in an accident on the South Wales Railway. There was an arrangement between the two companies under which the lines were worked, and the fares paid by the passengers were apportioned. A collision occurred, through no fault of the driver, with a locomotive engine left on the South Wales line by the servants of the South Wales Railway Company. The passenger was being conveyed in the same carriage in which he left Paddington (*m*).

(*l*) *Wright* v. *Midland Rail. Co.*, L. R. 8 Ex. 137, see *per* Cleasby, B., p. 145.

(*m*) *Gt. Western Rail. Co.* v. *Blake*, 7 H. & N. 987; and see *Buxton* v. *North-Eastern Rail. Co.*, L. R. 3 Q. B. 54, where a bullock had strayed on to the Midland line, *ante*, p. 40.

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Similarly a passenger booked by the Rhymney Railway Company from Caerphilly to Cardiff, in 1869, recovered damages against that company for injuries sustained in an accident on the Taff Vale Railway. At Llandaff the line of the former company joined that of the latter; but the former had running powers over it on payment of certain tolls, the traffic arrangements being left in the control of the latter. The train of the Rhymney Railway Company having arrived at Llandaff, was allowed by the station-master to leave the station only three minutes after an engine and tender of the Taff Vale Company had started on the same line; and the Rhymney Railway Company's train, without any negligence on the part of those in charge of it, ran into the engine and tender, the night being dark and the engine and tender not having a proper tail light (*n*).

Also in another case, in 1867, a passenger recovered damages against the South-Eastern Railway Company under the following circumstances: He was a passenger on the company's railway from Deptford to Charing Cross. The train was detained for some minutes outside the Cannon Street Station, which is between Deptford and Charing Cross, and where it was usual for trains to stop until notice was given that the station was clear. Other companies had running powers over this portion of the company's line. Whilst the train was stationary, another train which was approaching Cannon

(*n*) *Thomas* v. *Rhymney Rail. Co.*, L. R. 6 Q. B. 266.

Street by the same line, ran into it. No further proof was given as to how the accident happened, nor as to whether the train which caused it belonged to the South-Eastern Railway Company or was under their control. For the company it was contended that there was nothing to show that it did not belong to one or other of the companies which had running powers over the line, or that it was not perfectly independent of the South-Eastern Company's control. But the Court was of opinion that in the absence of evidence to the contrary, it was to be presumed that the offending train either belonged to the owners of the line, or was under their direction and control (*o*).

On the other hand, a passenger failed in an action in 1872 against the Midland Railway Company under the following circumstances (*p*). He was a passenger by the Midland from Leeds to Sheffield. Over a portion of the line near Leeds the London and North-Western Railway Company had running powers. The signals at the junction of the two lines were under the control of the former company. On the occasion of the accident the signalman had set the signal in favour of the Midland train, and against any train approaching from the North-Western line. Whilst the Midland train was on the line, it was run into by a London and North-Western train which was driven by persons who had negligently disregarded the

(*o*) *Ayles* v. *South-Eastern Rail. Co.*, L. R. 3 Ex. 146.
(*p*) *Wright* v. *Midland Rail. Co.*, L. R. 8 Ex. 137.

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signals. It was held that the plaintiff could not recover against the Midland Railway Company in respect of injuries sustained by the collision. Baron Bramwell, in delivering judgment, said:—"This act of the North-Western Company is not negligence which related to the plaintiff being carried at all; it was done while he was being carried, it is true, but it had nothing to do with his being carried. It was done by the North-Western Company for their own purposes in a matter not connected with the carrying of the plaintiff. It was not a negligent act which made the road unsafe, nor the carriage or engine unsafe, or the signals wrong, but done outside of the carrying (if I may use the expression), and which caused damage to the plaintiff while he was being carried" (*q*).

The same principles, it seems, would apply to the case of an accident and injury to a passenger booked to a place on another company's line, and at the time of the accident being carried not only over another company's line but in another company's train. In 1841 the following case occurred. A parcel was delivered at Lancaster to the Lancaster and Preston Junction Railway Company, directed to a person at a place in Derbyshire. That company were proprietors of the line only as far as Preston. At Preston the line joined the

(*q*) As to the liability of the London and North-Western Rail. Co., see *Tebbutt* v. *Bristol and Exeter Rail. Co.*, L. R. 6 Q. B. 73.

North Union Railway, which afterwards united with the Liverpool and Manchester Railway at Parkside, and that with the Grand Junction Railway. The parcel arrived safely at Preston, but was lost after it was despatched from thence by the North Union Railway. The Lancaster and Preston Junction Railway Company were held liable for the parcel, they having received and booked it to the place to which it was directed (*r*).

Akin to the last subject is the question of the liability of a railway company in respect of injuries to a passenger while passing from one station to another where the stations of different companies adjoin. In 1869 a passenger from Gloucester to Bristol by the Midland, being desirous of proceeding at once by the Great Western to Bath, was passing from the Midland station through the Bristol and Exeter station to the Great Western, the three stations adjoining, and that being the usual route from the Midland to the Great Western. As he stood on the platform waiting for the porter to come up with his luggage, it happened that a porter of the Bristol and Exeter Company came up drawing a truck heavily laden with luggage, and having to turn round a corner close

(*r*) *Muschamp* v. *Lancaster and Preston Junction Rail. Co.*, 8 M. & W. 430. See *Mytton* v. *Midland Rail. Co.*, 4 H. & N. 615, *post*, p. 96; *Bristol and Exeter Rail. Co.* v. *Collins*, 7 H. of L. Cas. 194; and *Gill* v. *Manchester and Sheffield Rail. Co.*, L. R. 8 Q. B. 186; and see *per* Martin, B., in *Coxon* v. *Gt. Western Rail. Co.*, 5 H. & N. 279.

CHAP. III. to where the passenger was standing he turned so sharply that a portmanteau fell off and struck against the passenger's leg, doing him considerable injury. In an action against the Bristol and Exeter Company the jury gave the plaintiff a verdict for £300, and the company failed to set it aside. They contended that the plaintiff was not on the platform on any business of theirs, but merely as a licensee using it for his own convenience (*s*).

IX.—CONTRIBUTORY NEGLIGENCE.

In most cases of accident the question arises whether the passenger has so far contributed to the misfortune by his own negligence as to be the author of his own wrong, and therefore cannot recover damages from the railway company for the injuries he has sustained. It has been laid down that the proper question in such case is, "whether the damage was occasioned entirely by the negligence or improper conduct of the defendant, or whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary and common care and caution, that, but for such negligence or want of ordinary care and caution on his part, the misfortune would not have happened. In the first case, the plaintiff would be entitled to recover, in the latter not; as,

(*s*) *Tebbutt* v. *Bristol and Exeter Rail. Co.*, L. R. 6 Q. B. 73.

but for his own fault, the misfortune would not have happened. Mere negligence or want of ordinary care or caution would not, however, disentitle him to recover, unless it were such, that, but for that negligence or want of ordinary care and caution, the misfortune could not have happened; nor, if the defendant might by the exercise of care on his part have avoided the consequences of the neglect or carelessness of the plaintiff" (*t*).

This doctrine has been recently applied (in 1875) to the following circumstances (*u*). Armstrong, one of the travelling inspectors of the London and North-Western Railway Company, was in August, 1873, travelling under a pass from that company in one of their trains from Leeds to Manchester. This train had to pass Clayton Bridge Station, which is on a branch of the Lancashire and Yorkshire Railway, over which branch the London and North-Western had running powers. Upon arriving at the station the train ran against some coal waggons which were being shunted from a siding by the Lancashire and Yorkshire Company, and Armstrong was seriously injured. There was

(*t*) *Tuff* v. *Warman*, 5 C. B. N. S. 585. See *Dowell* v. *General Steam Navigation Co.*, 5 El. & Bl. 206; *Bridge* v. *Grand Junction Rail. Co.*, 8 M. & W. 244.

(*u*) *Armstrong* v. *Lancashire and Yorkshire Rail. Co.*, L. R. 10 Ex. 47. See *Waite* v. *North-Eastern Rail. Co.*, 1 E. B. & E. 719, where a child, five years old, though not guilty of any negligence, was held so identified with its grandmother, whose negligence contributed to the damage, that an action in the child's name could not be maintained.

CHAP. III. evidence that the collision was owing to the driver of the London and North-Western train approaching Clayton Bridge distant signal, on a hazy day and when the rails were slippery, at so high a speed that he was unable to stop when he came in sight of the signal, which had been placed at danger by the Lancashire and Yorkshire Company. Armstrong being unable to maintain an action against the London and North-Western as he was their servant, brought an action against the Lancashire and Yorkshire Company, but it was held the action was not maintainable, their conduct not having been the proximate cause of the accident. The negligence on the part of the driver of the train in which he was a passenger, conduced to the accident, which might have been avoided by reasonable care on his (the driver's) part (*v*).

a.—JUMPING OUT TO AVOID DANGER.

It would seem, on the analogy of a case against a coach proprietor, that a passenger could maintain an action against a railway company for injury sustained by jumping out of a train in order to extricate himself from apparently impending peril, if he was placed by the misconduct of the company in such a situation as obliged him to adopt the alternative of a dangerous leap or to remain at certain peril (*x*). This doctrine (*y*), it is said, has

(*v*) *Thorogood* v. *Bryan*, 8 C. B. 115.

(*x*) *Jones* v. *Boyce*, 1 Stark. 493.

(*y*) *Robson* v. *North-Eastern Rail. Co.*, L. R. 10 Q. B. 274. Confirmed on appeal, 10th November, 1876.

been rightly extended in more recent times to a "grave inconvenience," when the danger to which the passenger is exposed is not in itself obvious. Thus one judge (Montague Smith, J.) has said (z), "If the negligence of a railway company puts a passenger in a situation of alternative danger, that is to say, if he will be in danger by remaining still, and in danger if he attempts to escape, any injury that he may sustain in so doing, is a consequence of the company's negligence; but if he is only suffering some inconvenience, and, to avoid that, he voluntarily runs into danger, and injury ensues, that cannot be said to be the result of the company's negligence. It is hardly necessary to say, that though I use the words 'danger' and 'inconvenience,' yet, if the inconvenience is very great, and the danger run in avoiding it very slight, it may not be unreasonable to incur that danger." And so another judge (Brett, J.) (a): "I think, if the inconvenience is so great that it is reasonable to get rid of it by an act obviously dangerous, and executed without carelessness, the person causing the inconvenience by his negligence would be liable for any injury that might result from an attempt to avoid such inconvenience."

(z) *Adams* v. *Lancashire and Yorkshire Rail. Co.*, L. R. 4 C. P. 742.

(a) Ib., 744.

b.—FLYING OPEN OF DOOR.

In 1868, a passenger by the Lancashire and Yorkshire Railway Company, named Adams, failed to recover damages for injuries sustained by him under the following circumstances. He was being carried as a passenger from Waterloo, in Lancashire, to Liverpool. The lock of the door of the carriage, in which he was, being defective, shortly after leaving Waterloo the door flew open, and Adams shut and fastened it three times. It flew open a fourth time, and Adams again trying to shut and fasten it fell out and was injured. In three minutes the train would have arrived at the next station, and it had stopped at three stations between the first opening of the door and the occurrence of the accident. There was room in the carriage for Adams to have sat away from the door. It was a July afternoon, and it did not appear that the weather was bad. The Court were of opinion that the company were not liable; their negligence was neither the immediate nor the efficient cause of the accident; that cause was the act of Adams himself, and he was not placed in such a situation of peril or inconvenience as to have justified him in incurring danger (*b*).

(*b*) *Adams* v. *Lancashire and Yorkshire Rail. Co.*, L. R. 4 C. P. 739. The application of the rule—that though the plaintiff was exposed to some inconvenience by the door opening, he ought to have borne that inconvenience, and not put himself in danger—to the circumstances of the case was subsequently doubted. See *per* Brett, J., in *Gee* v. *Metropolitan Rail. Co.*, L. R. 8 Q. B. 176; but see *per* Cockburn, C.J., *S.C.*, p. 165.

But in another case, finally decided in 1873, a passenger recovered £250 damages against the Metropolitan Railway Company for injuries sustained by falling out of the carriage by reason of the door flying open. The facts were as follows:— On the 10th of January, 1870, Gee with his brother were travelling in a second-class carriage, and some conversation having arisen between them with respect to the mode of signalling in use on the line, as the train was approaching the Sloane Square Station, he got up from his seat and put his hand on the bar which passed across the window of the carriage, with the intention of looking out to see the lights of the next station. As soon as he took hold of the bar and leant a little forward, the door flew open, and he fell out. It was held there was evidence to go to the jury; that leaving the door not perfectly fastened was the cause of the injury which Gee sustained, without any improper or negligent act on his part. A passenger, who rises for the purpose either of looking out of the window, or of dealing with, and touching, and bringing his body in contact with the door, for any lawful purpose whatever, has a right to assume that the door of the carriage is securely fastened. This case was distinguished from the last one on the ground that that was decided on the principle, that though Adams was exposed to some inconvenience by the door opening, he ought to have borne that inconvenience and not put himself in danger (*c*).

(*c*) *Gee* v. *Metropolitan Rail. Co.*, L. R. 8 Q. B. 161.

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Similarly, in 1873, a woman recovered damages from the Great Eastern Railway Company for injuries sustained by falling out at a station after the train had stopped. She stated that she was seated on one side of the carriage, and her child on the other side, opposite to her; that on arriving at the station at which she intended to get out, after the train had stopped she rose from her seat, took her child from the seat opposite to her, and turned round with the child in her arms, intending to sit down where the child had been sitting until the porter should open the door. In doing so she touched the door, which flew open, and she fell out and was injured (*d*).

c.—CARRIAGE OVERSHOT THE PLATFORM, OR NOT ALONGSIDE OF IT.—CALLING OUT NAME OF STATION.

The Great Western Railway Company, in 1868, successfully defended an action (*e*) brought against them, in respect of injuries sustained under the following circumstances. Siner and his wife were passengers by an excursion train to Rhyl. On arrival at Rhyl Station, the train being too long for the platform, the carriage in which they were overshot it, and the train came to a standstill. It was then daylight. Their only way of alighting where

(*d*) *Richards* v. *Gt. Eastern Rail. Co.*, 28 L. T. N. S. 711.

(*e*) *Siner* v. *Gt. Western Rail. Co.*, 3 L. R. Ex. 150 (Kelly, C.B., dissenting); and 4 L. R. Ex. 117 (Keating, J., dissenting).

the carriage stood was, either by jumping from the iron step to the ground (a distance of about three feet), or stepping from the iron step to a horizontal board, which ran along the carriage about half-way between the step and the ground, and thence to the ground. The passengers were not told to keep their seats, and no porters were in sight. Following the example of other passengers Siner alighted. His wife, standing on the iron step, took both his hands as he stood below her, and jumped down, and in so doing, strained her knee. The train was not backed into the station, all the passengers in the front carriages having got out, nor did it move at all until it started for Bangor. The Court held that the accident was caused by the passenger's own act and not by the company's negligence. No requisition was made to them to back the train, or to facilitate the descent of the passengers, and no direct invitation to descend was given. It did not appear that the train would not have been backed, had not all the passengers alighted. But if the place was dangerous, and the company's servants would not put back the train, or provide safe means of descent, the passengers should have stayed in the carriage (*f*). People do not consider that if in such case they keep their places and suffer an inconvenience in consequence they have a remedy against the company for carrying them beyond their destination against their will,

(*f*) See *per* M. Smith, J., L. R. 4 Ex. p. 123 ; and see *per* Bramwell, B., *S. C.*, L. R. 3 Ex. 154.

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and not providing proper means of alighting at the desired station (*g*). In another case (*h*) it was said by Cockburn, C. J., on this subject:—"The train may sometimes stop short of the platform, or shoot beyond it, and the passengers may in consequence have to alight elsewhere than on the platform. Still the purpose always is to bring all the carriages, if possible, to a level with the platform, and therefore, a railway traveller is entitled to expect that when he steps out he will step on to the platform. But I agree that if it be daylight, a man being bound to use his eyesight, if the passenger sees that the carriage is not in the ordinary position with reference to the platform, he must not complain if, there being no actual danger, he has to use a little more care than usual in getting out. If the position be such that there is some extraordinary difficulty or danger, he must consider what he will do. He may call to the servants of the company to bring the carriage into its proper position; but there may be circumstances in which it is impossible to make such an application, or he may have no opportunity of making it, or the application may be refused. It is possible that from urgent natural necessity he may be obliged to alight. Under such circumstances as these I am far from saying that he might not have a right of action if he suffered injury while so alighting."

(*g*) *Harrold* v. *Gt. Western Rail. Co.*, 14 L. T. N. S. 440, *per* Bramwell, B.

(*h*) *Praeger* v. *Bristol and Exeter Rail. Co.*, 24 L. T. N. S. 105, *post*, p. 63.

It is not easy to reconcile the decision in Siner's case with a subsequent one (*i*), in 1875, by the Court of Queen's Bench against the North-Eastern Railway Company. Robson was a passenger to a small station called Benton. On arrival at Benton the carriage in which she was overshot the platform, and the train came to a standstill. It appeared that upon the train stopping she rose, and opened the door and stepped on to the iron step; that she looked to see whether there were any railway servants about, and saw the station-master taking luggage out of or putting luggage into the van, but she did not see the guard or any other railway servant, and she stood on the step looking for somebody to help her, until she became afraid of the train moving away, and no one then coming she tried to alight by getting on to the footboard, and in so trying slipped her foot and fell down by the carriage side, and was injured. It was day-time. The station was a very small one, and the platform short, and the station-master the only servant kept there. It did not appear that the name of the station was called out, or that the passengers were told or directly invited to alight; on the other hand, it did not appear that the passengers who were beyond the platform had been warned not to alight; and there was no indication of any intention to back the train. It was held upon this evidence that the jury might reasonably have come to the conclusion

(*i*) *Robson* v. *North-Eastern Rail. Co.*, L. R. 10 Q. B. 271, confirmed on appeal, 10th November, 1876.

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that the plaintiff had arrived at the spot at which it was intended she should alight, and that she was by the act of the company's servants impliedly invited so to do, or at least that the conduct of the servants was such as would induce a reasonable person in the plaintiff's circumstances to believe, and did in fact induce her to believe, that she was invited to alight there. The invitation to alight was at a spot at which the ordinary and usual means of descent were absent, and no substitute was provided. A jury might not improperly have found that the expectation of being carried beyond the Benton Station was easily entertained by Robson, and that the inconvenience would have been such as not to render it imprudent on her part to expose herself to what did not probably present itself to her as any obvious danger, viz., endeavouring to alight by means of the step and footboard (*k*). A verdict was therefore entered for the plaintiff for £100.

(*k*) Field, J., in delivering the judgment of the Court, adds:—"We do not say that the jury might not, on this evidence, have found that the plaintiff herself, by negligence on her part, so far contributed to the result as that, but for her negligence, it would not have come about; but we certainly, in the present case, cannot say that there was any such conclusive evidence that the injury was brought about, or materially conduced to, by any act of negligence of the plaintiff, as to have rendered it the duty of the judge to have withdrawn the case from them." At the trial a nonsuit had been directed, leave being reserved to the plaintiff to move to enter a verdict for £100, if the Court should think *there was evidence of negligence for the jury*. Similarly, in Siner's case, the jury found a

In a previous case (*l*), in 1866, the Great Western Railway Company had successfully defended an action brought against them under circumstances very similar to those in the two last cases. The accident in that case happened at Limpley Stoke to a passenger by a train running from Wells to Bath. It was a dark night, but the passenger knowing that the train had overshot the platform, without waiting to see if it would be backed, got out of the carriage, and missing his footing, fell over an embankment into the roadway beneath.

On the other hand, in 1874, a passenger received £100 (agreed damages), against the London, Brighton, and South Coast Railway Company, for injuries sustained by falling on an embankment in alighting from the train. The plaintiff, Weller, was a passenger from London Bridge to Selhurst, near Norwood, on the 25th November, 1872. He was a season-ticket holder accustomed to stop there. On the arrival of the train between 6 and 7 in the evening, a porter called out "Selhurst, Selhurst," and then the train stopped. On hearing the name of the station, and the opening and shutting of car-

verdict for the plaintiff, leave being reserved to the company to move to enter a nonsuit or a verdict for them, on the ground that *there was no evidence of negligence to go to the jury*. As to how far the question of contributory negligence is open on such reservations, see conflicting opinions of the judges; *Bridges* v. *North London Rail. Co.*, L. R. 6 Q. B. 377, S. C. L. R. 7 ; H. of L. 213 and *Gee* v. *Metropolitan Rail. Co.*, L. R. 8 Q. B. 161.

(*l*) *Harrold* v. *Great Western Rail. Co.*, 14 L. T. N. S. 441.

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riage doors, and seeing a person descend from the next carriage, and not being aware that the carriage in which he was had overshot the platform, he stepped out. He fell upon an embankment, a depth of 4½ feet, and was injured. The plaintiff said the night was so dark that he could not see whether there was a platform or not. Though the calling out the name of the station was not *per se* evidence of negligence, nor was overshooting the platform, still the train having overshot the platform, and the name having been called out, the company's servants ought to have cautioned the passengers not to alight; their omission to do so was evidence of negligence, and there was no evidence of contributory negligence on the part of the plaintiff (*m*).

So previously, in 1865, a lady, a second-class passenger, recovered £500 damages against the same company. The circumstances were the same as those in Siner's case, except that in this one the lady had been desired by the porter to alight. Being in delicate health, the concussion caused by jumping to the ground seriously injured her spine (*n*).

So, also, in 1871, a professor and teacher of drawing recovered £1500 damages from the Bristol and Exeter Railway Company. The train, on arriving at Yatton, drew up so that the carriage in

(*m*) *Weller* v. *London, Brighton, and South Coast Rail. Co.*, L. R. 9 C. P. 126.

(*n*) *Foy* v. *London, Brighton, and South Coast Rail. Co.*, 18 C. B. N. S. 225.

which he was came to a standstill opposite a part of the platform which had been bevelled off into a curve, so as to allow space for a siding, and consequently a space of 18 inches or two feet was left between the carriage and the platform. The plaintiff slipped out and fell between the platform and the carriage. A guard opened the door, but said nothing; he gave no caution or warning. It was a dark evening, and the station was dimly lighted. On appeal, the Court was of opinion that the conduct of the guard amounted to an invitation to alight, and the danger to be incurred in so doing was not apparent (*o*).

In a very similar case (*p*), the London and South-Eastern Railway Company, in 1872, were held liable to a passenger who sustained injuries by falling between the carriage and the platform. The plaintiff, Cockle, was a passenger on the 20th March, 1869, from Spa Road to Deptford, where she lived. On arriving at Deptford Station at midnight, the train was drawn up so that the carriage in which the plaintiff was did not come alongside the proper platform, but only alongside the end of it where it receded from the rails, and where trains did not usually draw up. The lights at that end had been put out, and the night was dark. On opening

(*o*) *Praeger* v. *Bristol and Exeter Rail. Co.*, 24 L. T. N. S. 105.

(*p*) *Cockle* v. *London and South-Eastern Rail. Co.*, L. R. 7 C. P. 321. See a very similar case: *Gill* v. *Gt. Eastern Rail. Co.*, 26 L. T. N. S. 945, which was decided on the authority of *Cockle's Case*.

CHAP. III. the door and stepping out the plaintiff fell in the space between the carriage and the platform. There was no evidence that the name of the station had been called out, nor was there any invitation to alight; but on the other hand there was no warning not to alight. The train had come to a standstill, and was not again set in motion until it started on its onward journey. It was held, on appeal, that the plaintiff was entitled to a verdict on the ground that the bringing up of a train to a final standstill, for the purpose of the passengers' alighting, amounts to an invitation to alight, at all events, after such a time has elapsed that the passenger reasonably may infer that it is intended that he should get out if he purposes to alight at the particular station. Here danger was not visible and apparent, as where a passenger gets out in broad day, trusting to his ability to overcome the difficulty. In other words, the leaving a carriage which has been brought up to a place at which it is unsafe for a passenger to alight, under circumstances which warrant the passenger in believing that it is intended he shall get out, and that he may therefore do so with safety, without any warning of his danger, amounts to negligence on the part of the company, for which, at least in the absence of contributory negligence on the part of the passenger, an action may be maintained.

It was decided by seven judges, in 1871, that the calling out the name of the station by the company's servants on the arrival of the train is not in

itself an invitation to alight. Whether it is so or not must depend on the circumstances of each particular case (*q*).

In a very recent case (*r*), in 1873, in an action against the London, Chatham, and Dover Railway Company, it was decided that they were not liable under the following circumstances. As the train was coming up to the station some official on the platform called out "Bromley, Bromley." The train overshot the platform, and the plaintiff knowing the place well, saw that her carriage was not alongside the platform, but at the edge or corner of it, and that part of the train was beyond the platform. A few seconds after the train was backed to the platform. The plaintiff in the meantime proceeded to get out, but a sudden jerk, caused by the backing, threw her down on the edge of the platform. It was held that there was no evidence from which a jury could reasonably find negligence on the part of the company.

d.—JAMMING FINGERS, ETC., IN DOOR OR WINDOW.

An action was brought, and a verdict for £5 obtained, against the South-Eastern Railway Company, in 1866, under the following circumstances. The plaintiff, a boy twelve years of age, had entered a

(*q*) *Bridges* v. *North London Railway Co.*, L. R. 6 Q. B. 377, S. C., L. R. 7 H. of L. 213.

(*r*) *Lewis* v. *London, Chatham, and Dover Rail. Co.*, L. R. 9 Q. B. 66.

CHAP. III. railway carriage at night-time, and endeavoured to seat himself by taking hold of the frame-work of the door. His father immediately followed, and before he had entered the carriage, a porter, who came along closing the doors, violently shut the door, striking the father on the back and crushing the boy's fingers. The carriage was a third class one, and there were no straps or bands by which the boy could assist himself. There was a lamp in the carriage, which reflected a very dim light. The majority of the Court of Exchequer (Kelly, C.B., dissenting), held that the verdict was right, the boy was not guilty of contributory negligence (*s*).

And in another case (*t*), decided in 1869, the London, Brighton, and South Coast Railway Company were held liable for injuries sustained by a passenger under the following circumstances. In getting into a third-class carriage at Sydenham, he placed his left hand on the back of the open door to aid him in mounting the step. The night was dark, and he did not see any handle to the right hand of the door, and there was conflicting evidence as to whether there was one. He had a parcel in his right hand. Before he had completely entered the carriage, the guard, without any previous warning closed the door, and crushed his hand between the back of the door and the door-post. He recovered £25 damages.

(*s*) *Coleman* v. *South-Eastern Rail. Co.*. 4 H. & C. 699.

(*t*) *Fordham* v. *London, Brighton, and South Coast Rail. Co.*, L. R. 4 C. P. 619.

But in a subsequent case (*u*), a passenger failed to recover damages from the Metropolitan Railway Company for an injury incurred under similar circumstances, except that before closing the door the porter called out, "Take your seats, take your seats;" and the passenger admitted at the trial that he had his hand on the door half a minute after he had entered the carriage. The case was distinguished from the last one on the ground that the porter had merely closed the door in the ordinary and proper exercise of his duty, after due warning; and that the accident was solely attributable to the passenger's own want of caution in leaving his hand, after he had entered the carriage, upon a door which he must have known would be shut immediately.

In a still later case (*x*), against the same Company, in 1874, a passenger recovered £50 damages, his thumb having been crushed under the following circumstances. The plaintiff was a third-class passenger from Moorgate Street to Westbourne Park. On arrival at Gower Street the compartment in which the plaintiff sat contained the full complement of passengers, when three additional persons got in, notwithstanding the strong remonstrances of the plaintiff, and stood in front of him. At Portland Road Station, where the accident happened,

(*u*) *Richardson* v. *Metropolitan Rail. Co.*, L. R. 3 C. P. 374.

(*x*) *Jackson* v. *Metropolitan Rail. Co.*, L. R. 10 C. P. 49.

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the door of the carriage had been shut and the train had started, when some one re-opened the door and several persons attempted to get into the carriage, and the plaintiff, who sat next to the door, in trying to keep them out got his thumb in the door-jamb, when the porter closed the door again. The Court held that the permitting the three extra passengers to remain in the carriage when there was an opportunity of removing them, and the absence of a sufficient number of porters in attendance on the platform to control the large number of persons assembled there, amounted to negligence (z), and that they were a contributory cause of the injury to the plaintiff without any contributory negligence on his part.

In 1873, the following circumstances were held not to establish even a *primâ facie* case against the Metropolitan Railway Company. The plaintiff at 9 in the evening became a passenger at the West Brompton Station, which is a terminal station of the company. He occupied the seat next to the window, and placing his right hand on the seat, allowed his left to rest on the ledge of the window, which was up when he entered the carriage. As the train approached Charing Cross Station, the break was suddenly put on, and the window falling down from the vibration, caused a serious injury to the plaintiff's finger. A model of the window was

(z) As to the duty of a company to regulate the crowd, see *Hogan* v. *South-Eastern Rail. Co.*, 28 L. T. N. S. 271.

produced at the trial, but no particular defect in its construction was pointed out (*a*).

X.—AMOUNT OF DAMAGES RECOVERABLE FOR INJURIES.

As regards the amount of damages recoverable by a passenger from a railway company for injuries, it is said in Mayne's Treatise on Damages (*b*): "Very little can be said with certainty as to damages for personal injuries inflicted by negligence. Loss of time during the cure, and expense incurred in respect of it, are of course matters of easy calculation. Pain and suffering undergone by the plaintiff are also a ground of damages (*c*). And in this point such an action differs from one brought by the personal representatives, where a death has ensued. Any permanent injury, especially when it causes a disability from future exertion, and consequent pecuniary loss, is also a ground of damage. This is one of the cases in which damages most signally fail to be a real compensation for the loss sustained. In one case (*d*), Parke, B., said, "It would be most unjust if, whenever an accident occurs, juries were to visit the unfortunate cause of it with the utmost amount

(*a*) *Murray* v. *Metropolitan Rail. Co.*, 27 L. T. N. S. 762.
(*b*) 2nd ed., p. 351.
(*c*) *Blake* v. *Midland Rail. Co.*, 18 Q. B. 111.
(*d*) *Armsworth* v. *South-Eastern Rail. Co.*, 11 Jur. 760, cited 18 Q. B. 104.

CHAP. III. which they think an equivalent for the mischief done. Scarcely any sum could compensate a labouring man for the loss of a limb, yet you do not in such a case give him enough to maintain him for life." No rule can be laid down in such a case; and although juries are frequently cautioned not to let their verdict be influenced by the poverty of the plaintiff and the wealth of the defendant, yet the caution is probably seldom attended to.

A sum received by the plaintiff on an accidental insurance policy cannot be taken into account in reduction of damages, for one who pays premiums for the purpose of insuring himself, pays on the footing that his right to be compensated, when the event insured against happens, is an equivalent for the premiums he has paid; it is a *quid pro quo*, larger if he gets it, on the chance that he will never get it at all (*e*). A different rule prevails in the case of an action for compensation after the death of the injured party.

XI.—LORD CAMPBELL'S ACT FOR COMPENSATING FAMILIES OF KILLED—DAMAGES RECOVERABLE THEREUNDER.

Prior to the passing of Lord Campbell's Act, in 1846, for compensating the families of persons killed by accident (9 & 10 Vict. c. 93), no action was maintainable against a person (or company), who by his wrongful act, neglect, or default, had caused

(*e*) *Bradburn* v. *Gt. Western Rail. Co.*, L. R. 10 Ex. 1.

the death of another person, the rule of law being *actio personalis moritur cum personâ*. That Act, however, made the person (or company), in such case liable under such circumstances as would (if death had not ensued), have entitled the party injured to maintain an action and recover damages, and although the death be caused under such circumstances as amount in law to felony (*f*). Every such action is to be for the benefit of the wife, husband, parent, and child of the deceased (*g*). The child must be legitimate (*h*), but it may be *en ventre sa mère* at the time of its father's decease (*i*). The jury may give such damages as they may think proportioned to the injury resulting from such death to the parties for whose benefit the action is brought; and the amount is to be divided among them in such shares as the jury shall direct (*k*). The action must be commenced within twelve months of the death of deceased (*l*). It is to be brought by and in the name of the executor or administrator of the deceased, but if no action has been brought by the executor or administrator within six months of the death, or if there is no executor or administrator, the action may be brought by the persons beneficially interested in its result (*m*).

Not more than one action will lie in respect of

(*f*) Sect. 1.
(*g*) Sect. 2.
(*h*) *Dickinson* v. *North-Eastern Rail. Co.*, 2 H. & C. 735.
(*i*) *The George* v. *Richard*, L. R. 3 Adm. 466.
(*k*) S. 2.
(*l*) S. 3.
(*m*) S. 2; and 27 & 28 Vict. c. 95, s. 1.

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the same subject-matter of complaint (*n*). And so where a railway company has in the lifetime of the injured party paid him and he has accepted a sum of money in satisfaction of all claims, a fresh cause of action is not created by his death enabling his representatives to recover damages from the company (*o*).

Nothing in this Act contained applies to Scotland (*p*).

The damages recoverable under Lord Campbell's Act are not for solacing the wounded feelings of the family of deceased, nor is the measure of damages the loss or suffering of the deceased, but the injury resulting from his death to the family, of which a pecuniary estimate can be made (*q*). The damages are not to be given merely in reference to the loss of a legal right. They should be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of the life (*r*). Thus, a parent may recover for the loss of the probability that his son

(*n*) 9 & 10 Vict. c. 93, s. 3.

(*o*) *Read* v. *Gt. Eastern Rail. Co.*, L. R. 3 Q. B. 555. But it would seem to be otherwise where the passenger has been induced by misrepresentation to accept a sum and sign a release from any action for compensation. *Hirschfield* v. *London, Brighton, and S. Coast Rail. Co.*, Q. B. D. Nov. 10, 1876.

(*p*) The law of assythment applies to Scotland, see *Blake* v. *Midland Rail. Co.*, 18 Q. B. 109.

(*q*) *Blake* v. *Midland Rail. Co.*, 18 Q. B. 93.

(*r*) *Franklin* v. *South-Eastern Rail. Co.*, 3 H. & N. 211.

would have continued to contribute to his maintenance. They must not include the expenses of the funeral or of mourning (*s*). The remedy given by the statute is not to a class but to individuals (*t*); therefore on the death of a person whose income arose exclusively from land and personalty, no portion of which was lost to his family by his death, but by the changed mode of its distribution some members were deprived of pecuniary benefits which they would in all reasonable probability have enjoyed had he survived, an action in their behalf was maintained. In that case the income of the deceased was £3869 a year. On his death his wife received a jointure of £1000 a year, and his eight younger children £800 a year. The jury gave a verdict for £13,000, which they apportioned thus: £1000 for the widow, and £1500 for each of the younger children. The amount was afterwards reduced by consent to £9000, and apportioned thus: £1000 for the widow, and £1000 for each of the children (*u*).

From the aggregate amount of damage must be deducted any sum for which the deceased was insured against accidents by railways. Whatever

(*s*) *Dalton* v. *South-Eastern Rail. Co.*, 4 C. B. N. S. 296.

(*t*) *Pym* v. *Gt. Northern Rail. Co.*, 4 B. & S. 396.

(*u*) As to the calculation of the value of a life and of joint lives, see *Rowley* v. *London and North-Western Rail. Co.*, L. R. 8 Ex. 221. As to the mode of procedure where the company pays a lump sum into Court, which is received and retained by one of the parties entitled, no apportionment having been made, see *Condliff* v. *Condliff*, 29 L. T. N. S. 831.

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comes into the possession of the family who have suffered by the death of their relative must be taken into account (*x*).

XII.—DAMAGES IN CASE OF INJURY OR DEATH MAY BE REFERRED TO AN ARBITRATOR — EXAMINATION BY MEDICAL MAN.

By the Regulation of Railways Act, 1868 (*y*), the following provision has been made for referring to arbitration any claim for damages in respect of injuries or death:—"Where a person has been injured or killed by an accident on a railway, the Board of Trade, upon application in writing made jointly by the company from whom compensation is claimed, and the person, if he is injured, or his representatives, if he is killed, may, if they think fit, appoint an arbitrator, who shall determine the compensation (if any) to be paid by the company" (*z*).

Also provision is made for examination of an injured person by a medical man not a witness on either side on the order of a judge or arbitrator (*a*).

(*x*) *Hicks* v. *Newport, &c., Rail. Co.*, 4 B. & S. 403 (note to *Pym* v. *Gt. Northern Rail. Co.*). See remarks on this, *per* Bramwell, B., in *Bradburn* v. *Gt. Western Rail. Co.*, L. R. 10 Ex. 2.

(*y*) 31 & 32 Vict. c. 119.

(*z*) S. 25.

(*a*) S. 26. As to the cases in which a plaintiff is or is not entitled to see the reports to the company of their medical man when he has made an examination of the person injured, and reports of the officers of the company as to the happening of the accident, see *Skinner* v. *Gt. Northern Rail. Co.*, L. R. 9 Ex.

XIII.—ACTIONS AT COMMON LAW BY EXECUTOR, ETC., OF DECEASED. CHAP. III.

Besides the statutory action for compensation after the death of the injured person, the personal representative of the deceased can at common law maintain an action for breach of contract against the railway company, and recover the damage to his personal estate arising in his lifetime from medical expenses and loss occasioned by his inability to attend to business in consequence of injuries sustained (*b*).

Also it has been held that an action is maintainable by the personal representative of a deceased person against a railway company for damages for breach of contract entered into with him in his lifetime to carry his wife safely, but by the company's negligence she was injured, whereby he suffered loss, for that she was unable for a long time to carry on, manage, and assist him in his business of a restaurant-keeper, and so he lost profit and was put to expense in providing other persons to assist him, and incurred expense in nursing and providing medical attendance for her (*c*).

298 ; *Woolley* v. *North London Rail. Co.*, L. R. 4 C. P. 602 ; *Cossey* v. *London, Brighton, and S. Coast Rail. Co.*, L. R. 5 C. P. 146 ; and *Baker* v. *London and S. Western Rail. Co.*, L. R. 3 Q. B. 91 ; *Fenner* v. *London and S. Eastern Rail. Co.*, L. R. 7 Q. B. 767 ; *Malden* v. *Great Northern Rail. Co.*, L. R. 9 Ex. 300. n.

(*b*) *Bradshaw* v. *London and Yorkshire Rail. Co.*, L. R. 10 C. P. 189.

(*c*) *Potter* v. *Metropolitan District Rail. Co.*, 30 L. T. N. S. 765.

XIV.—RETURN OF ACCIDENTS.

Railway companies are now bound in most cases of accident to send notice to the Board of Trade, and the Board may direct an inquiry (*d*). And in every case of death on a railway or from injuries received on a railway, the coroner must within seven days of holding an inquest make a return of the death and its cause to one of the principal Secretaries of State (*e*).

(*d*) 34 & 35 Vict. c. 78, ss. 6, 7.

(*e*) 36 & 37 Vict. c. 76, s. 5; and see 34 & 35 Vict. c. 78, s. 8, as to appointment of an assessor to a coroner.

CHAPTER IV.

I.—KEEPING TIME—RUNNING TRAINS AS ADVERTISED.

ONE of the questions of greatest interest and importance to travellers, and of most frequent occurrence is, what is the liability of a railway company in respect of keeping time or running trains as advertised? In answering this question it will be necessary to consider what duty or contract (*a*) arises from their publication of time-tables, what from issuing tickets or "through tickets." Can they limit their liability, and if so, to what extent? Apart from the time-tables what is their obligation? And lastly, what damages can be recovered from them?

II.—ISSUING OF TIME TABLES—THROUGH TICKETS.

The issuing of time-tables by a company amounts to a promise that there shall be a train as advertised running at a particular time to a particular

(*a*) The duty arises out of contract—whether duty or contract is a matter of pleading—see *per* Crompton, J., *Prevost* v. *Gt. Eastern Rail. Co.*, 13 L. T. N. S. 21; and *per* Blackburn, J., in *Hobbs* v. *London and South-Western Rail. Co.*, L. R. 10 Q. B. 119; *Austin* v. *Gt. Western Rail. Co.*, L. R. 2 Q. B. 445; *Marshall* v. *York, Newcastle, and Berwick Rail. Co.*, 11 C. B. 655; and *Martin* v. *Gt. Indian Peninsula Rail. Co.*, L. R. 3 Ex. 9. And see *ante*, p. 34.

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The same company were also held liable in another action in the same year under the following circumstances. In the company's time-tables a train was advertised to leave London at 5 p.m., and reach Peterborough about 7 p.m., and thence to proceed to Hull, and to arrive there about midnight. On the faith of these tables, Denton, on the 25th March, went to Peterborough by an early train, transacted his business there, and went

(*b*) See *per* Lord Campbell, C.J., and Wightman, J., in *Denton* v. *Gt. Northern Rail. Co.*, 5 Ell. & Bl. 860; and see *Muschamp* v. *Lancaster and Preston Junction Rail. Co.*, 8 M. & W. 421, *ante*, p. 49; and *Le Blanche* v. *London and North-Western Rail. Co.*, L. R. 1 C. P. D. 286.

(*c*) *Hamlin* v. *Gt. Northern Rail. Co.*, 1 H. & N. 408; better reported in 26 L. J. Ex. 26.

to the station of the Great Northern, at Peterborough, in time to take a ticket to Hull by the train so advertised, but there was no such train to Hull, nor had there been one during any part of the month. Denton, therefore, could not get to Hull in time for an appointment which he had made for the morning of the 26th. In the previous month there had been an arrangement between the companies whereby the North-Eastern Railway Company conveyed on their line, from Milford junction to Hull, passengers booked at stations on the Great Northern line, but this train had been discontinued from the 1st of March. The Great Northern Railway Company, nevertheless, had made no alteration in their time-tables (*d*).

III.—LIMITATION OF COMPANY'S LIABILITY BY NOTICES IN TIME-TABLES.

Railway companies are in the habit of publishing with the time-tables certain notices or conditions to protect them from being held to have guaranteed the departure and arrival of trains at the times advertised by them. Thus, at the bottom of the time-tables of the Great Northern was the following notice (*e*):

> The companies make every exertion that the trains shall be punctual, but their arrival or departure at the times

(*d*) *Denton* v. *Gt. Northern Rail. Co.*, 5 Ell. & Bl. 860.
(*e*) Ib., 861.

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It was held, however, that this had no application to Denton's case, as the train had been altogether taken off. In Hamlin's case it did not appear what was the cause of the too late arrival, and the condition in the time-table was not in evidence.

In two actions brought against the Great Eastern Railway Company, in 1865 and 1870, that company in defence relied upon the terms of a similar notice:

> These tables show the time at which the trains may be expected to arrive and depart from the several stations. Every exertion will be used to insure punctuality, but the departure or arrival of trains at the time stated will not be guaranteed, nor will the company hold themselves responsible for delay, or any consequence arising therefrom.

At the trial of the earlier case the judge (*f*) laid down that the plaintiff must show negligence or want of care on the part of the company. Their duty and contract was to use due care and not be negligent. "The company," he said, "very properly decline to guarantee the time of the arrival or departure of trains, because there may be accidents or other matters which render punctuality impossible. It is, however, the duty of the company to use due and proper care with the view of insuring

(*f*) Crompton, J., *Prevost* v. *Gt. Eastern Rail. Co.*, 13 L. T. N. S. 20.

punctuality." The jury were of opinion that no negligence was shown, and the plaintiff failed (*g*).

The plaintiff in the later case (*h*) succeeded; he recovered the cost of a special train and damages for loss of market. He was a miller, the holder of a season-ticket between Framlingham in Suffolk, and London, and was in the habit of going to London every Monday and Friday, to the Mark Lane corn-market, by a train on the Great Eastern line, which was advertised to depart at 6.45 a.m., and to reach London at 10.40 a.m. The corn-market opened at 11. One Monday morning he came as usual to the station to travel by the train, but at the time advertised for departure, though the train and engine were at the platform, steam was not up, and the train could not proceed. After a time he obtained a special train, but he did not reach London till after 12, and was too late for the market. The company relied upon the above notice in their time-tables, and upon the following statement on the ticket:

> This ticket is issued subject to the provisions of the company's bye-laws, rules, and regulations in force during its term. It is also issued on the condition that the company shall not be liable in respect of any alteration of trains, or any delay in the starting or arrival of trains, arising from accident *or other cause* during its term.

The judge laid down that "other cause" meant

(*g*) The finding of the jury is not very intelligible. See the report and compare *Hobbs* v. *London and South-Western Rail. Co*, L. R. 10 Q. B. 111, *post*, p. 90.

(*h*) *Buckmaster* v. *Gt. Eastern Rail. Co.*, 23 L. T. N. S. 471.

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"other cause of accidental kind," and put the question to the jury, "Was the delay caused by the gross (*i*) negligence of the company's servants in not using reasonable exertions to procure the departure of the train?"

In a very recent case (*k*) against the London and North-Western Railway Company, the following conditions relied on by the company were much discussed:

The arrival time denotes when the trains may be expected; but the passengers, to insure being booked, should be at the principal stations five minutes earlier, and the intermediate stations ten minutes earlier. The doors of the booking-office will be closed punctually at the hours fixed for the departure of the trains, after which no person can be admitted.

Time Bills.—The published train bills of this company are only intended to fix the time at which passengers may be certain to obtain their tickets for any journey from the

(*i*) *Per* Rolfe, B.: "I can see no difference between negligence and gross negligence—it is the same thing with the addition of a vituperative epithet." *Wilson* v. *Brett*, 11 M. & W. 113. See *per* Crompton, J., in *Beal* v. *South Devon Rail. Co.*, 3 H. & C. 337; and *per* Willes, J., in *Grill* v. *General Iron Screw Collier Co.*, L. R. 1 C. P. 612; and in *Lord* v. *Midland Rail. Co.*, L. R. 2 C. P. 344. "Any negligence is gross in one who undertakes a duty, and fails to perform it. The term 'gross negligence' is applied to the case of a gratuitous bailee, who is not liable unless he fails to exercise the degree of skill which he possesses." As to "wilful negligence," Blackburn and Mellor, JJ., are "at a loss to say what that means;" *McCawley* v. *Furness Rail. Co.*, L. R. 8 Q. B. 57.

(*k*) *Le Blanche* v. *London and North-Western Rail. Co.*, L. R. 1 C. P. D. 286. Final judgment was given May 10, 1876.

various stations; it being understood that the trains shall not depart before the appointed time. Every attention will be paid to insure punctuality as far as it is practicable; but the directors give notice that the company do not undertake that the trains shall start and arrive at the time specified in the bills; nor will they be accountable for any loss, inconvenience or injury which may arise from delays or detention. The right to stop the trains at any station on the line, though not marked as a stopping station, is reserved.

The granting of tickets to passengers to places off the company's line is an arrangement made for the convenience of the public; but the company do not hold themselves responsible for any delay, detention, or other loss or injury whatsoever arising off their lines, or from the acts or defaults of other parties, nor for the correctness of the times over the lines of other companies, nor for the arrival of this company's own trains in time for the nominally corresponding train of any other company or party.

On the 18th August, 1874, the plaintiff, Le Blanche, took a first-class ticket of the London and North-Western Railway Company, at Liverpool, by the 2 p.m. train for Scarborough, viâ Eccles, Staleybridge, Huddersfield, Leeds, and York. The ticket had indorsed upon it:

Issued by the London and North-Western Railway Company subject to the company's regulations and to the conditions of the time-tables of the respective companies over whose lines this ticket is available.

According to the advertisement in the time-tables a passenger leaving Liverpool by this train should arrive at Scarborough at 7.30 p.m. The train from Liverpool arrived at the company's station at Leeds

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at 5.27, that was 27 minutes after the advertised time. Between Liverpool and Leeds the train passed over the lines of three other companies, besides the lines of the London and North-Western. The train of the North-Eastern Railway Company, by which the plaintiff would in the ordinary course have proceeded from Leeds, had left Leeds at the time advertised for departure, viz., 5.20. He proceeded by the next train to York, and arrived there at 7. Finding that there was no train to Scarborough till 8, which was timed to arrive at 10, and notwithstanding that he had not any business or engagement whatever necessitating his arrival at Scarborough at any particular time, he took a special train, and arrived at Scarborough between 8.30 and 9 p.m. Le Blanche afterwards sued the London and North-Western Railway Company to recover the cost of the special train.

It was shown at the trial that there was a loss of two minutes in starting from Liverpool, three more in starting from St. Helen's Junction caused by the shunting of a goods train; in all, fifteen minutes had been lost before the train left the company's station at Manchester; it should have left Manchester at 3.20, but did not leave till 3.35. The County Court Judge gave judgment for the plaintiff for the sum claimed. The company appealed to the High Court.

The Common Pleas Division, affirming the County Court judge, were of opinion that the contract, which was to be inferred from the taking and granting the

ticket, the time tables, and the conditions, was that the London and North-Western Railway Company and their servants would pay every attention, *i. e.* make every reasonable effort to insure punctuality, and to meet the corresponding trains of other companies; but, subject thereto, were not to be liable for loss, inconvenience, or injury, which might arise from delays or detention, however long, caused, for instance, by snow, accident, or the like. They also considered that there was evidence of neglect by the company's servants to make every reasonable effort; the delay of fifteen minutes in starting from Manchester was of itself sufficient to require explanation, also the delay at St. Helen's junction. The Court laid down that the mere fact of there being some want of punctuality, either in starting a train from its first or any intermediate station, or in the arrival at any station, would not necessarily be any evidence of a want of reasonable effort. But an unusual or long delay would be evidence calling upon the company to account for it by showing that it occurred, as by the bursting of an engine-pipe, or collision, or snow or wet preventing friction, or accident, or by a sudden, unexpected, and not to be reasonably expected pressure of passengers,—something which prevented punctuality, notwithstanding reasonable efforts to secure it were made.

Leave was given by the Court to appeal from their judgment in consideration of the great importance of the case, both to railway companies and to the public (*l*). On appeal, Cleasby, B., was of

(*l*) *Per* Baggallay, J.A., L. R. 1 C. P. D. p. 317.

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opinion that there was no binding contract as to the particular time of arrival, either as an absolute contract, or a contract that every attention should be paid to ensure it. But the majority of the Court of Appeal adopted generally the view of the Common Pleas Division, except that Baggallay, J. A., considered that the company was protected against being subjected, by reason of their issuing a through ticket to any place off their line, to any additional responsibility beyond what they would have been subject to if they had issued a ticket to the furthest point of their own line, and had left the passenger to take a fresh ticket to his ultimate destination. James, L. J., was of opinion that the contract was to be read as if it were a contract made with regard to that particular train on that particular day, just as if somebody else, not the company, had made for that day arrangements enabling them to take passengers from Liverpool to Scarborough; that there was a promise that the persons having the control and management of that train for that particular day, would pay every reasonable attention, so far as it was practicable for them, to ensure punctuality, viz., that they would not be guilty of wilful delay or reckless loitering.

On the question of damages the Common Pleas Division upheld the judgment of the County Court judge, on the ground that, if the party bound to perform a contract does not perform it, the other party may do so for him as reasonably near as may be, and charge him for the reasonable expense in-

curred in so doing. The Court of Appeal, however, reversed the judgment on this point. While admitting the general rule as stated, they were of opinion that the person with whom a contract has been broken must not, in fulfilling the contract for himself as nearly as may be, act unreasonably or oppressively as regards the other party, or extravagantly, which they considered the plaintiff in this case had done. Mellish, L. J., said, one mode of determining what, under the circumstances, was reasonable, is to consider whether the expenditure was one which any person in the position of the plaintiff would have been likely to incur if he had missed the train through his own fault, and not through the fault of the railway company. The question which the County Court judge ought to have considered was, whether, according to the ordinary habits of society, a gentleman in the position of the plaintiff, who was going to Scarborough for the purpose of amusement, and who missed his train at York, would take a special train from York to Scarborough at his own cost, in order that he might arrive at Scarborough an hour or an hour and a half sooner than he would do if he waited at York for the next ordinary train.

CHAP. IV. IV.—LIABILITY ARISING FROM GRANTING A TICKET—SPECIAL CONTRACT—REFERENCE ON TICKET TO CONDITIONS IN TIME TABLES.

In an earlier case (*m*), tried in 1865, a passenger sought to recover against the Great Western Railway Company, compensation in damages for delay and detention on a journey, without putting in evidence the time-tables; his ticket did not refer to them or to any conditions. The facts were as follows:—

The plaintiff Hurst, a mining engineer at Durham, on 17th December, 1864, went to the Great Western Railway Company's station at Cardiff for the purpose of proceeding to Newcastle, by a train from Milford, which, according to the ordinary course, should have arrived at Cardiff at 4.34 p.m., and proceeded thence to Gloucester, there to join the mail train from Bristol, and thence pass through Birmingham and Derby to Newcastle, arriving there at 8 o'clock the following morning. At the Cardiff station Hurst enquired of the clerk in the booking-office if he could book to Newcastle by the train which was then about due, and was told that he could. He thereupon took a ticket, upon which were printed the words—

Great Western Railway, Cardiff to Newcastle *vid* Midland Railway, first class.

Nothing was then said about the train being de-

(*m*) *Hurst* v. *Gt. Western Rail. Co.*, 19 C. B. N. S. 310.

layed; but the plaintiff was afterwards informed by one of the officials at the station that the Milford train had broken down at Swansea; and it did not arrive until 6 o'clock. The mail train for Birmingham left Gloucester at 8.17, and the Milford train was due at Gloucester at 7.5; it did not, however, arrive at Gloucester until 8.45. The plaintiff was consequently obliged to wait until the following day.

In some correspondence which subsequently took place between the plaintiff and the secretary and the solicitor of the company, reference was made by the latter to the time-bills, in which it was expressly stated that the company did not guarantee the arrival or departure of the trains at the exact times stated therein, but that they would do their best to insure punctuality. The Court of Common Pleas were of opinion that there was no contract or duty shown on the part of the railway company to have a train ready at the time the passenger was led to expect it. Apart from the time-tables there was no reference to any particular time; they ought to have been put in evidence by the plaintiff; and they would have disclosed the conditions limiting the company's contract as to time. It had been urged that what passed between Hurst and the company's servants constituted a special contract, but this was also negatived by the Court, and the plaintiff was nonsuited.

In *Le Blanche's case*, Brett, J., in delivering the judgment of the Common Pleas Division, is reported

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to have said, "If there were no conditions, or *if the ticket did not refer to them*, it would be necessary to infer the terms of the contract by implication from the fact of granting and receiving a ticket for such a service as carriage by railway." But it is apprehended that *Hurst's case* (*n*) establishes (*o*) that, whether the time-tables or the conditions are referred to on the ticket or not, in order to ascertain what is the company's contract reference must be made to the company's time-tables, apart from which there is no evidence of a contract as to the particular time of departure and arrival of the train; and the time-tables must be taken as a whole, that is, together with the conditions repudiating a warranty of punctuality. In *Le Blanche's case*, it will be remembered, the ticket did refer to the conditions in the time-tables, so that this point really was not before the Court.

A somewhat curious case (*p*) very recently occurred illustrative of the obligation incurred by a railway company by the issuing of a ticket to a particular place by a particular train. Hobbs and his wife and two young children, who resided at New Hampton, between two and three miles from Hampton Court, were desirous of returning home from Wimbledon, where they had been spending the day. The last train for Hampton Court left the

(*n*) *Ante*, p. 88.

(*o*) See especially *per* Montague Smith, J., 19 C. B. N. S. 321.

(*p*) *Hobbs* v. *London and South-Western Rail. Co.*, L. R. 10 Q. B. 111.

London and South-Western Station on certain nights in the week a little after midnight. On arriving at the station before twelve, Hobbs enquired and was told the train went to Hampton Court, and was given tickets, and the party took their places in the train. That particular night the train did not go to Hampton Court, as they first discovered on hearing the name of Esher Station called out. They alighted at Esher, and being unable to obtain accommodation there or a conveyance, had to walk about six miles in the dark and wet to their home, the distance from Esher being about three miles further than from Hampton Court Station. In an action against the company the jury awarded them £10 damages for the inconvenience suffered by them in being obliged to walk home, and the Court of Queen's Bench (1875), affirmed the verdict in that respect (*q*).

V.—DAMAGES.

We now come to consider what damages can be recovered against a railway company for breach of contract in the preceding cases. The general rule has already been stated, in *Le Blanche's case* (*r*), that where the company fails to fulfil its contract, the passenger may perform it for himself as reasonably near as may be, and charge the company for the

(*q*) See also *Gt. Northern Rail. Co.* v. *Hawcroft*, 21 L. J. Q. B. 178, *ante*, p. 4.

(*r*) *Le Blanche* v. *London and North-Western Co.*, L. R. 1 C. P. D. 286, *ante*, p. 86.

CHAP. IV. reasonable expense incurred in so doing. In that case it was considered by the Court of Appeal that the passenger had not acted reasonably, but extravagantly and oppressively as regards the company in taking a special train merely to arrive at the seaside an hour or an hour and a half earlier than he would have done had he waited for the next ordinary train. But in *Buckmaster's case* (*s*) the jury were probably right in awarding him the cost of the special train which he had taken as the only means of avoiding the frustration of his object in going to town, viz., attending the Mark Lane Corn Market, which was held on that and another day only in the week, and opened at 11.

It was admitted in *Hamlin's case* (*t*), that he might, by posting from Great Grimsby to New Holland, a distance of 18 miles, and taking a boat across to Hull, have arrived at Hull in time to enable him to proceed to Driffield to keep appointments which he had made there, and for which he was too late, and might have charged the company with the cost of the conveyance and the boat. So, also, it was admitted in *Hobbs' case* (*u*), that had he been able to obtain a conveyance from Esher, he

(*s*) *Buckmaster* v. *Gt. Eastern Rail. Co.*, 23 L. T. N. S. 471, *ante*, p. 81.

(*t*) *Hamlin* v. *Gt. Northern Rail. Co.*, 26 L. J. Ex. 20, *ante*, p. 78. In *Denton's Case*, *ante*, p. 79, which came before the Queen's Bench on a case stated, it was merely stated in the case that the plaintiff had "sustained damage to the amount of 5*l.* 10*s.*"

(*u*) *Hobbs* v. *London and South-Western Rail. Co.*, 10 L. R. Q. B. 111, *ante*, p. 90.

would have been entitled to charge the company with the cost. CHAP. IV.

But supposing the circumstances of the case are such as not to justify the passenger in taking a special train, or other conveyance, or he is unable to or at any rate does not take one; or having taken one, yet does not reach his destination in time for the business or appointment which called him there; what damages can he recover from the company?

It seems clear that the passenger is entitled to nominal damages; and further to such other damages as he can show he has really sustained of a pecuniary kind as the direct consequence of the breach of contract; for instance, in *Hamlin's case*, the cost of a fresh ticket next morning from Great Grimsby to Hull (*x*). But the passenger

(*x*) *Hamlin* v. *Gt. Northern Rail. Co.*, 26 L. J. Ex. 20; and 1 H. & N. 408, *ante*, p. 78. Hamlin recovered 5*s.*; that, according to the Law Journal Report, was the amount he paid for his night's lodging and the fare to Hull. Martin, B., observed to the jury that it was doubtful whether Hamlin could recover for the bed, as he must have slept at Hull; and Blackburn, J., commenting on this in *Hobbs* v. *London and South-Western Rail. Co.*, L. R. 10 Q. B. 120, says, "I must say I do not know how the amount was arrived at. The inconvenience he did suffer in sleeping at Grimsby, instead of at Hull, seems really to be nothing, and there was no substantial ground on which he could have recovered." Baggallay, J.A., referring to the case in *Le Blanche* v. *London and North-Western Rail. Co.*, L. R. 1 C. P. D. 323, treats the amount as made up of 1*s.* 4*d.* for the fare, plus nominal damages. In the report in 1 H. & N. 409, it is said Hamlin paid 2*s.* for his bed and some refreshment, and 1*s.* 4*d.* for his fare to Hull.

CHAP. IV. cannot recover damages for the disappointment of mind occasioned by the breach of contract. The law takes no notice of the vexation which has been suffered. It is one of the evils of life, and every one must bear his own share of them. Personal inconvenience, however, may be taken into account as a subject-matter of damage, for instance, the having to walk six miles in the middle of a wet and dark night, as in *Hobbs' case* (*y*). But the inconvenience or injury for which compensation is sought must be one that may be fairly taken to have been contemplated by the parties as the possible result of the breach of contract (*z*); in other words (*a*), the damages directly proceeding from that breach of contract and not too remotely. Therefore it was held in *Hobbs' case* that damages could not be recovered in respect of a cold caught by his wife by the exposure on the wet night and its consequences, viz., her inability to assist her husband in his business, and the incurring expenses for medical attendance. In *Hamlin's case* (*b*) it was admitted that he not having communicated to the company the special injury likely to result from the breach of contract, he could not charge them with the specific damage he incurred, viz., considerable expense and loss of time, having been eight days

(*y*) *Hobbs* v. *London and South-Western Rail. Co.*, L. R. 10 Q. B. 111, *ante*, p. 90.

(*z*) *Per* Cockburn, C. J., p. 117.

(*a*) *Per* Blackburn, J., p. 121.

(*b*) *Hamlin* v. *Gt. Northern Rail. Co.*, 1 H. & N. 408, *ante*, p. 78.

longer upon his journey than he would have been had he been able to keep his original appointments. In *Buckmaster's case* (*c*), under the direction of Martin, B., the jury awarded the plaintiff £10 in respect of loss of business, in addition to the cost of the special train, he having, notwithstanding the special train, arrived too late for the market. But there probably the train was specially run on the particular day, at the particular time, to enable parties to attend the Mark Lane Corn Market, and it was for this purpose, as the company knew, that Buckmaster had taken a season-ticket; so it might be said in that case that such damages arose naturally, *i.e.*, according to the usual course of things from the breach of contract, and were in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it (*d*).

(*c*) *Buckmaster* v. *Great Eastern Rail. Co.*, 23 L. T. N. S. 472, *ante*, p. 81.

(*d*) *Hadley* v. *Baxendale*, 9 Ex. 341.

CHAPTER V.

I.—LUGGAGE ALLOWED TO BE CARRIED WITH PASSENGER FREE OF CHARGE.

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THE impossibility of travelling without the accompaniment of a certain quantity of luggage for the personal comfort and convenience of the traveller, has led from the earliest times to the practice on the part of carriers of passengers for hire of carrying, as a matter of course, a reasonable amount of luggage for the accommodation of the passenger, and of considering the remuneration for the carriage of such luggage as comprehended in the fare paid for the conveyance of the passenger. Under the older system of travelling by stage-coaches, canal-boats, or other vessels, the amount of luggage to be thus carried free of charge was commonly made part of the contract by express stipulation or notice from the carrier. Under the modern system of railway conveyance, it is fixed and regulated by the various Acts of Parliament under which railways have been established (*a*).

The provision fixing the amount of luggage which

(*a*) But the Act of Parliament incorporating the South Wales Railway Company provided that every passenger travelling on the railway should take his luggage at his own risk. See *per* Martin, B., *Mytton* v. *Midland Rail. Co.*, 4 H. & N. 621.

the traveller shall be entitled to take with him free of charge has a two-fold object: first, that of securing to the traveller the conveyance of a reasonable amount of luggage; secondly, that of protecting the carrier from all dispute as to the amount of luggage which the passenger may claim to have carried, as well as of entitling the former to a proper remuneration for the carriage of luggage in excess of the quantity thus fixed by statute (*b*).

For instance, it is provided by the Act of the Great Western Railway Company (9 & 10 Vict. c. xci., s. 63):—

> Every passenger travelling upon the railway may take with him his ordinary luggage, not exceeding 100lbs. in weight for first-class passengers, 60 lbs. in weight for second-class passengers, and 40 lbs. in weight for third-class passengers, without any charge being made for the carriage thereof.

Similarly by the Act of the North-Eastern Railway Company (17 & 18 Vict. c. ccxi., s. 39):—

> Every passenger travelling upon the railway may take with him his ordinary luggage, not exceeding 150 lbs. in weight for first-class passengers, and 100 lbs. in weight for second and third-class passengers, without any extra charge being made for the carriage thereof.

(*b*) *Per* Cockburn, C. J., *Macrow* v. *Gt. Western Rail. Co.*, L. R. 6 Q. B. 617, 618.

II.—EXCURSION TICKET-HOLDER CHARGED FOR LUGGAGE.

A company may, however, notwithstanding such provisions, exact payment for carrying luggage within the amount allowed to passengers by their Act, where they issue cheap excursion tickets subject to the condition that no luggage will be allowed to passengers taking such tickets; and this, though the tickets are available by ordinary trains (*c*).

III.—RECOVERY OF WHAT IS DUE FOR CARRIAGE OF LUGGAGE.

Where anything is payable for luggage, if the passenger fails to pay it on demand, the company may detain and sell the goods, or recover what is due by an action at law (*d*).

IV.—EXCESS QUANTITY.

If a passenger is permitted, either on payment or without payment of an extra charge, to take more than the regulated quantity of luggage, the company incur in respect of the excess quantity the same liability as in respect of the regulated quantity (*e*).

(*c*) *Rumsey* v. *North-Eastern Rail. Co.*, 32 L. J. C. P. 244. See *post*, p. 111.

(*d*) Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 97.

(*e*) *Macrow* v. *Gt. Western Rail. Co.*, L. R. 6 Q. B. 619; *Gt. Northern Rail. Co.* v. *Shepherd*, 8 Ex. 39.

V.—RAILWAY COMPANY LIABLE ONLY FOR ORDINARY OR PERSONAL LUGGAGE.

The liability of railway companies as carriers of passengers' luggage, attaches only in respect of what properly falls under the denomination of ordinary or personal luggage, or has been knowingly by the company's servants accepted as such, either on payment or without payment of an extra charge (*f*). In the latter case it will not be sufficient to render the company liable that they might have suspected or believed from the external appearance of the package that it contained merchandise, but there must be facts from which knowledge on the part of the company by their servants may be inferred.

VI.—ORDINARY OR PERSONAL LUGGAGE, WHAT?

The question therefore arises, what is a passenger's ordinary or personal luggage? It is very difficult, perhaps impossible, to frame a definition which shall be precise enough for all purposes (*g*). It does not include merchandise or articles brought for the purpose of being manufactured and sold at a

(*f*) *Macrow* v. *Gt. Western Rail. Co.*, L. R. 6 Q. B. 619; *Gt. Northern Rail. Co.* v. *Shepherd*, 8 Ex. 30; *Cahill* v. *London and North-Western Rail. Co.*, 13 C. B. N. S. 818; *Belfast and Ballymena, &c., Rail. Cos.* v. *Keys*, 9 H. of L. 556.

(*g*) *Per* Lush, J., *Hudston* v. *Midland Rail. Co.*, L. R. 4 Q. B. 370.

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profit (*h*); or title-deeds belonging to a client which a solicitor is carrying in his portmanteau for the purpose of producing on a trial, or Bank of England notes to meet the contingencies of the action (*i*); or a "spring-horse," (a child's toy, an improvement on the old rocking-horse, about 44 inches in length) (*k*); or household goods, as a quantity of bedding, intended for the use of the passenger's household, when he shall have provided himself with a home (*l*). The true rule (*m*) is that whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities, or to the ultimate purpose, of the journey, must be considered as personal luggage. This would include, not only all articles of apparel, whether for use or ornament, but also the gun-case or the fishing apparatus of the sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of an analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying.

(*h*) *Gt. Northern Rail. Co.* v. *Shepherd*, 8 Ex. 38.

(*i*) *Phelps* v. *London and North-Western Rail. Co.*, 19 C. B. N. S. 321.

(*k*) *Hudston* v. *Midland Rail. Co.*, L. R. 4 Q. B. 366.

(*l*) *Macrow* v. *Gt. Western Rail. Co.*, L. R. 6 Q. B. 612.

(*m*) *Per* Cockburn, C. J., *Macrow* v. *Gt. Western Rail. Co.*, L. R. 6 Q. B. 622.

VII.—RAILWAY COMPANY LIABLE TO PASSENGER, AND FOR HIS LUGGAGE ONLY.—MASTER.—SERVANT.

A railway company is liable only for the luggage of the passenger with whom it is carried; so a master cannot sue a company for loss of his portmanteau carried with his servant, though he himself proceeded by a later train on the same day (*n*). And the liability is to the passenger himself, though another has paid his fare; so a servant can recover for the loss of his luggage, though his fare was paid by his master, with whom he was travelling (*o*).

VIII.—WHAT IS THE LIABILITY OF RAILWAY COMPANIES AS CARRIERS OF LUGGAGE?

In an earlier chapter, treating of the liability of railway companies as carriers of passengers, reference has been made to the 89th section of the Railways Clauses Consolidation Act, 1845 (*p*), which equally applies to their liability as carriers of passengers' luggage. It is as follows:—

> Nothing in this, or the Special Act contained, shall extend to, charge, or make liable the company further, or in any other case than where, according to the laws of the realm, stage-coach proprietors and common carriers would be liable,

(*n*) *Becher* v. *Gt. Eastern Rail. Co.*, L. R. 5 Q. B. 241.
(*o*) *Marshall* v. *York, &c., Rail. Co.*, 11 C. B. 655.
(*p*) 8 & 9 Vict. c. 20, *ante*, p. 33.

CHAP. V. nor shall extend in any degree to deprive the company of any protection or privilege which common carriers, as stage-coach proprietors, may be entitled to; but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

As already explained, in regard to the persons of passengers, railway companies are not to be deemed common carriers, so as to be liable for all injuries and damages, from which, as common carriers, they would not be excused. The present question is in regard to their liability for the baggage or luggage of passengers, whether it is that of common carriers, or only that of private persons engaging ordinarily for hire, that is, for due and reasonable skill and diligence in their undertaking (*q*).

"The general tendency of the authorities," remarks Judge Story, "has at all times been to the point, that as to the baggage of the passengers, the proprietors (of stage-coaches, &c.) are common carriers. And the doctrine seems now firmly established, both in England and America, that the responsibility of coach proprietors carrying passengers with their baggage, stands, as to their baggage, upon the ordinary footing of common carriers."

"The conveyance of the personal luggage of the passenger," says Cockburn, C. J., in a recent case (*r*), "being obviously for his convenience, and there-

(*q*) Story on Bailments, s. 499.

(*r*) *Macrow* v. *Gt. Western Rail. Co.*, L. R. 6 Q. B. 618.

fore necessary, as it were, to his conveyance, it may be thought that the liability of the carrier in respect of the safe conveyance of passengers' luggage should have been co-extensive only with the liability in respect of the safety of the passenger. The law, however, is now too firmly settled to admit of being shaken, that the liability of common carriers in respect of articles carried as passengers' luggage is that of carriers of goods as distinguished from that of carriers of passengers; unless, indeed, where the passenger himself takes the personal charge of them, in which case other considerations arise."

The liability then of railway companies in respect of the luggage of passengers is that of common carriers of goods. By the Common Law a common carrier is responsible for all losses, except those occasioned by the act of God, or of the king's enemies (*s*). To give due security to property, the law has added to that responsibility of a carrier, which immediately arises out of his contract to carry for a reward, namely, that of taking all reasonable care, the responsibility of an insurer (*t*). There is implied a warranty safely and securely to carry; whether the carrier be guilty of negligence or not, is immaterial; the warranty is broken by the non-conveyance or non-delivery of the goods entrusted to the carrier (*u*).

(*s*) Story on Bailments, s. 489.

(*t*) *Riley* v. *Horne*, 5 Bing. 220, *per* Best, C.J.

(*u*) *Richards* v. *London, Brighton, and South Coast Rail. Co.*, 7 C. B. 858, *per* Wilde, C. J.

The rigour, however, of the Common Law was in 1830 relaxed by the Carriers' Act (11 Geo. IV. & 1 Will. IV. c. 68), to the protection of which railway companies, being held to be liable in respect of passengers' luggage as carriers of goods, are undoubtedly entitled (*x*); and the Carriers' Act (s. 1) specially mentions "any parcel or package which shall have been delivered, either to be carried for hire or to accompany the person of any passenger." Carriers had been in the habit of seeking to limit their liability at Common Law, by notices stating that they would not be liable for any property beyond a certain value unless paid for at an extra rate at the time, and this amounted to a special contract binding on the owner of the goods when brought home to his knowledge. Owing to the difficulty of fixing parties with knowledge of such notices, and carriers being, therefore, exposed to great and unavoidable risks, the legislature interfered, and limited the carriers' responsibility (*y*).

The Carriers' Act enacts that no common carrier by land for hire shall be liable for the loss of, or injury to, any gold or silver coin, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or timepieces of any description, trinkets, bills, bank-notes, orders, notes, or securities for payment

(*x*) *Macrow* v. *Gt. Western Rail. Co.*, L. R. 6 Q. B. 622.

(*y*) Mayne on Damages, 228; 11 Geo. IV. & 1 Will. IV. c. 68, preamble.

of money, stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate, or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not with other materials, furs, or lace, contained in any parcel or package, where the value of such article or articles shall exceed the sum of £10, unless at the time of the delivery thereof the value and nature of such article or articles shall have been declared, and an increased charge or an engagement to pay it, be accepted by the person receiving such parcel or package (*z*).

A notice stating the increased rates of charge is to be affixed in legible characters in some public and conspicuous part of the office, and all persons delivering such parcel or package shall be bound by such notice, without further proof of its having come to their knowledge (*a*). But if a receipt for the package acknowledging it to have been insured be not given when required, or such notice shall not have been affixed, the carrier shall not be entitled to any benefit or advantage under the Act, but shall be liable and responsible, as at the Common Law, and be liable to refund the increased rate of charge (*b*).

Where the value and contents of the package have been declared, and the increased rate paid, in case of loss or damage, the increased charge may be received in addition to the value of the packages (*c*). The carrier is not to be concluded by the declara-

(*z*) Sect. 1.
(*a*) Sect. 2.
(*b*) Sect. 3.
(*c*) Sect. 7.

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tion of value, but may require the actual value to be proved, but the damages recoverable against the carrier are limited by the value declared (*d*).

As to articles not enumerated above, the common law liability of a common carrier cannot be affected by any public notice or declaration (*e*).

But the Act does not affect any special contract which the parties may enter into (*f*).

The Act does not protect the carrier from liability for loss or injury arising from the felonious act of any servant, or the servant from liability for any loss or injury occasioned by his personal neglect or misconduct (*g*).

Where a railway company enters into one entire contract to carry partly by land and partly by water, the Carriers' Act applies so far as the land journey is concerned. So where a passenger took a ticket by the London and South-Western Railway from Jersey to London, and at Southampton his chronometer, while in the company's custody, was lost, the company were held protected from liability, he not having declared the value and nature of the article, the value being above 10*l.* (*h*).

(*d*) Sect. 9. (*e*) Sect. 4.

(*f*) Sect. 6. (*g*) Sect. 8.

(*h*) *Le Conteur* v. *London and South-Western Rail. Co.*, L. R. 1 Q. B. 54. The provisions of the Merchant Shipping Acts limiting the liability of shipowners in case of loss of or damage to goods to a sum proportioned to the tonnage of the ship, apply to the case of railway companies carrying partly by rail partly on ship (as from London to Guernsey) in respect of loss or damage on board ship. *London and South-Western Rail.*

The Act does not apply to protect railway companies in respect of loss suffered by the owner of the goods in consequence of mere delay in delivering them (*i*); but it does apply to protect a company in respect of goods which by the negligence of their servants have been carried beyond the point of the passenger's destination and injured (*k*). It has been said by Blackburn, J. (*l*), "If the carrier or those for whom he is responsible wilfully damage the goods, or dispose of them, or convert them to his or their own use, or if a third person claims them, and the carrier, knowing what he is about, says, 'Very well; if you will give me an indemnity, you shall have the goods,' in all these cases the carrier would be responsible," notwithstanding the Act.

In an action against a railway company in which it is alleged that the goods were lost through the felonious act of their servants, it is not necessary to give such evidence as would suffice to convict any particular servant on a criminal charge (*m*); but it is not sufficient to show merely that the company's servants had greater facility of access and opportunities of stealing the goods, and therefore that there

Co. v. *James*, L. R. 8 Ch. Ap. 241; 17 & 18 Vict. c. 104, s. 514; 25 & 26 Vict. c. 63, s. 54; *ante*, p. 38.

(*i*) *Hearn* v. *London and South-Western Rail. Co.*, 10 Ex. 793.

(*k*) *Morritt* v. *North-Eastern Rail. Co.*, L. R. 1 Q. B. D. 302.

(*l*) Ib., p. 308.

(*m*) *Vaughton* v. *London and North-Western Rail. Co.*, L. R. 9 Ex. 93.

CHAP. V. is a greater degree of probability that they took them than that a stranger took them (*n*).

b.—RAILWAY AND CANAL TRAFFIC ACT—SPECIAL CONTRACT—EXCURSION TRAIN.

"We find, then," says Blackburn, J., "that by the express enactment of the Legislature, in 11 Geo. IV. & 1 Will. IV. c. 68 (the Carriers' Act), no public notice or declaration could as such in any ways affect the liability of a carrier as regarded goods in general (*i.e.*, not enumerated in the Act), though special contracts might be made as at common law; and it had been decided that such notices or declarations, when brought home to the customer, did operate as being the basis of a special contract to carry on the conditions contained in such notices. It had also been decided that such conditions, when thus made part of a special contract, were binding, even when protecting the company from responsibility from all loss or injury however caused (*o*). It had further been decided that a special contract ought to be inferred from the act of a party sending goods after the receipt of a notice, even where the party protested against the notice. And this state of the law, it was alleged by many persons, was taken advantage of by the railway companies, who had a practical monopoly of the carriage of goods, and, it was alleged, abused their advantages so as

(*n*) *M'Queen* v. *Gt. Western Rail. Co.*, L. R. 10 Q. B. 579.

(*o*) But see *Martin* v. *Gt. Indian Peninsular Rail. Co.*, L. R. 3 Ex. 9.

'to evade altogether the salutary policy of the common law (*p*).'" CHAP. V.

It was under these circumstances that the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31) was passed.

The same learned judge elsewhere (*q*) says that the case of *Carr* v. *Lancashire and Yorkshire Railway Company* (*r*) led to the passing of the Act. "In that case a horse was killed by the gross and culpable negligence of the driver of another train, a servant of the company, and if the horse had been the property of a stranger, or even if it had been trespassing on the railway, and could not get out of the way of the coming train, the company would have been liable; yet the Court of Exchequer held that, as there was a stipulation in the contract of carriage that the horse should be carried at the risk of the person sending it, they must give judgment for the defendants, leaving it to the Legislature, if they thought fit, to alter the law; an appeal which the Legislature very soon answered by passing the Railway and Canal Traffic Act."

By the 7th section of the Act it is provided as to articles not of the descriptions mentioned in the Carriers' Act, including horses and other animals, that every railway company shall be liable for the

(*p*) *Per* Blackburn, J., in *Peek* v. *North Staffordshire Rail. Co.*, 10 H. of L. 507.

(*q*) *Gallin* v. *London and North-Western Rail Co.*, L. R. 10 Q. B. 216.

(*r*) 7 Ex. 707.

CHAP. V. loss of or injury to them in the receiving, forwarding, or delivering, occasioned by the neglect or default of the company or its servants, notwithstanding any notice, condition, or declaration, unless adjudged by the court or judge before whom any question relating thereto shall be tried, to be just and reasonable. Provided, that as regards animals the company is not to be liable beyond a limited amount, *e.g.*, £50 for a horse, unless the value is declared, in which case the company may make an extra charge. The proof of value in all cases is to lie on the person claiming compensation. And no special contract shall be binding on any party unless signed by him or by the person delivering the articles for carriage.

The section is expressed in a confused manner, but it has been construed to mean that no general notice given by a railway company shall be valid in law for the purpose of limiting the common law liability of the company as carriers. Such common law liability may be limited by such conditions as the court or judge shall determine to be just and reasonable: but with this proviso, that any such condition so limiting the liability of the company shall be embodied in a special contract in writing between the company and the owner or person delivering the goods to the company, and which contract in writing shall be signed by such owner or person (*s*).

The section applies to ordinary passengers' lug-

(*s*) *Per* Lord Westbury, L. C., in *Peek* v. *North Staffordshire Rail. Co.*, 10 H. of L. 566.

gage, that is, so far as it does not consist of articles enumerated in the Carriers' Act; so that a condition made by a railway company limiting their liability in respect of passengers' luggage is not binding, unless such condition is adjudged by the court or judge to be reasonable, and is contained in a contract signed by or on behalf of the passenger (*t*).

But in a case against the London and North-Western Railway Company, in 1864, it was held that the section does not apply to the luggage of a passenger by an excursion train (*u*). On the back of the ticket was printed "Issued subject to the conditions contained in the company's time and excursion

(*t*) *Cohen* v. *South-Eastern Rail. Co.*, L. R. 1 Ex. D. 217.

(*u*) *Stewart* v. *London and North-Western Rail. Co.*, 33 L. J. Ex. 199. The jury found in this case that the plaintiff had no knowledge of the special contract. But there was printed on the face of the ticket "ticket as per bill." Upon this, Pollock, C. B., said "There is a rule in the English law that every man must be taken to know that which he has the means of knowing, whether he has availed himself of those means or not. Now, as to this ticket, the plaintiff must be supposed to have read it. If he did not choose to consult the handbill, that is his fault, not the fault of the company." See *Henderson* v. *Stevenson*, L.R. 2 Sc. Ap. 470 (*ante*, p. 36), in which case there was a condition on the back of the ticket (protecting the company against liability in respect of injury, loss, or delay to the passenger or his luggage), but no reference on the face of the ticket to the back, or to anything which would inform the passenger of any conditions; and it was found that he had neither seen the condition nor had any one directed his attention to it. It was held that the passenger was not bound by the condition. As to the effect of this decision, see *per* Blackburn, J.,

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bills." The excursion hand-bills contained the following notice:—"Luggage under 60 lbs. free, at passenger's own risk." The passenger's portmanteau was lost, but the company were held protected by the condition, although the passenger had not signed any contract, and was not aware of the condition. Referring to this case, Bramwell, B., very recently (January 21st, 1876) said (*x*): "It appears that it was not the ordinary case of a man paying the ordinary charge, which comprehends a charge for carrying his luggage as a common carrier, but something out of the ordinary. I do not wish to throw any doubt on that case, but it was a case of a special excursion train, in which the parties made a bargain as to terms, of which the plaintiff might have informed himself if he had thought fit to do so, and I think the only way in which that judgment can be supported is by saying that the Railway and Canal Traffic Act applies to carrying a passenger and his luggage on an ordinary journey for the ordinary remuneration, such as he would have a right to demand by going to the company and tendering his fare, in which case I rather think he would have a right to bring an action if they refused to carry him, and that the Act does not apply to such a case as that of the special excursion train."

in *Harris* v. *Gt. Western Rail Co.*, L. R. 1 Q. B. D. 538, *post*, p. 121; and see contra, *Parker* v. *South-Eastern Rail. Co.*, 45 L. J. C. P. 515, *S. C.*, L. R. 1 C. P. D. 618, *post*, p. 121.

(*x*) *Cohen* v. *South-Eastern Rail. Co.*, L. R. 1 Ex. D. 221.

Nor does the section apply to the case of loss of or injury to luggage off the lines belonging to or worked by the company granting the ticket; so that railway companies are at liberty to make any contracts they please for limiting their liability on lines not their own, and it is not requisite that they should be signed by the passengers (*y*).

The section does, however, apply to traffic carried on by steam-vessels owned or used by railway companies. Accordingly (in 1876), in an action against the South-Eastern Railway Company, for loss of the luggage of a passenger from Boulogne to Folkestone, it was held that the railway company could not in answer rely upon conditions on the ticket limiting their liability, which were not signed by the passenger (*z*).

IX.—ARTICLES CARRIED IN THE CARRIAGE WITH THE PASSENGER.

With respect to articles which are not put in the usual luggage-van, and of which the entire control is not given to the carrier, but which are placed in the carriage in which the passenger travels, so that he and not the company's servants has *de facto* the entire control of them whilst the carriage is moving,

(*y*) *Zunz* v. *South-Eastern Rail. Co.*, L. R. 4 Q. B. 539. See *Kent* v. *Midland Rail. Co.*, L. R. 10 Q. B. 1, *post*, p. 120.

(*z*) *Cohen* v. *South-Eastern Rail. Co.*, L. R. 1 Ex. D. 217; 31 & 32 Vict. c 119, s. 16, 34 & 35 Vict. c. 78, s. 12; but see *Doolan* v. *Midland Rail Co.*, Ir. R. 10 C. L. 47.

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the amount of care and diligence reasonably necessary for their safe conveyance is, in fact, considerably modified by the circumstance of their being during that part of the journey, in which the passenger might, under ordinary circumstances, be expected to be in the carriage, intended by both parties to be under his personal inspection and care. In such case the obligation to take reasonable care only seems naturally to arise, so that when loss occurs it will fall on the company only in the case of negligence in some part of the duty which pertains to them (*a*).

So where a passenger, whose portmanteau had been placed at his request in the carriage with him, got out at an intermediate station on the journey, and, having through his own negligence failed to find the same carriage again, finished his journey in a different one; the portmanteau having been cut open and a portion of its contents abstracted during the latter part of the journey by persons in the carriage, and there having been no negligence on the part of the company's servants; it was held that the railway was not responsible for the loss (*b*).

X.—REFUSAL BY RAILWAY COMPANY TO CARRY EXCEPT AT PASSENGER'S RISK.

But a railway company cannot refuse to carry packages containing articles of wearing apparel

(*a*) *Talley* v. *Gt. Western Rail. Co.*, L. R. 6 C. P. 44.
(*b*) Ibid.

within the weight and bulk which the passenger is entitled to have carried as luggage by their Act of Parliament, and compel the passenger to take them in the carriage with him *at his own risk* (*c*). The power given to a company by their Act to make regulations as to the conveyance of luggage does not extend to this.

XI.—LUGGAGE CARELESSLY OR IMPROPERLY PACKED.

There may be cases where articles may be so carelessly and improperly packed as reasonably to justify a refusal on the part of the company to accept them. But it does not follow that they would be justified in rejecting every package which may be imperfectly packed (*d*).

XII.—COMMENCEMENT OF RAILWAY COMPANY'S LIABILITY.

The liability of a railway company in respect of a passenger's luggage commences from the receipt of the luggage by a porter or other person, as servant of the company, to be carried as passenger's luggage (*e*).

(*c*) *Munster* v. *South-Eastern Rail. Co.*, 4 C. B. N. S. 676.

(*d*) Ibid., p. 701, *per* Williams, J. See *Simons* v. *Gt. Western Rail. Co.*, 18 C. B. 805, where it was held that a condition that the company would not be responsible for the loss of any package insufficiently or improperly packed was just and reasonable within s. 7 of the Railway and Canal Traffic Act.

(*e*) *Lovell* v. *London, Chatham, and Dover Rail. Co.*, 45 L. J. Q. B. 476; and *Agrell* v. *London and North-Western Rail Co.*, 34 L. T. N. S. 134, note.

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Accordingly, in a very recent case (1876), where a lady, an intending passenger by the railway, arrived at the station half an hour before the time for departure of the train, and her luggage was taken from the cab by a porter, who said that if she would go and get her ticket he would label the luggage, and having taken her ticket she returned to the platform and found one of the articles taken from the cab by the porter was missing, the company was held liable for the loss (*f*). Notices were posted in the station warning the public against leaving articles in the offices or waiting-rooms, and stating that the company's servants were forbidden to take charge of any articles, that any article which a passenger wished to leave at a station should be deposited in the cloak-room, and that the company would not be responsible for any article left on their premises in any other manner. But such notices had no application to a case of this kind; the porter had received the luggage as the servant of the company, and at the commencement of the journey. On the other hand, where a porter took the portmanteau of an intending passenger off the cab, and carried it on the platform, and there left it, and the passenger being unable to get another porter labelled it himself and went away for refreshment, and on his return after 10 or 15 minutes the portmanteau was not to be found, it was held that the company was not liable (*g*).

(*f*) *Lovell v. London, Chatham, and Dover Rail. Co.*, 45 L. J. Q. B. 476.

(*g*) *Agrell v. London and South-Western Rail. Co.*, re-

XIII.—DURATION OF RAILWAY COMPANY'S LIABILITY.

In like manner a railway company's liability continues until the right and true delivery of the luggage (*h*); and if the company employ porters at their stations to convey luggage from the train to the vehicles by which it is to be taken away, the company's liability continues until the porters have discharged their duty, both as regards articles carried in the van and articles carried in the carriage with the passenger (*i*).

XIV.—WHAT COMPANY LIABLE FOR LUGGAGE LOST, ETC., ON LINE, OTHER THAN THAT OF COMPANY BY WHOM PASSENGER WAS BOOKED.

In case of loss of luggage in the course of a journey over different lines, the passenger being booked through, the company responsible is the company with whom the contract was made, *i.e.* the

ported only in the *Times* of Feb. 13th, 1875, but cited in the judgment of Pollock, B., and printed in a note to *Leach* v. *South-Eastern Rail. Co.*, 34 L. T. N. S. 134, which see. In *Agrell* v. *London and North-Western Rail. Co.*, the Exchequer Chamber (Brett, J., dissenting) reversed the decision of the majority of the Court of Exchequer, Kelly, C. B., and Amphlett, B.—Pollock, B., contra.

(*h*) Story on Bailments, s. 595; *Kent* v. *Midland Rail. Co.*, L. R. 10 Q. B. 1, *post*, p. 120.

(*i*) *Richards* v. *London, Brighton, and South Coast Rail. Co.*, 7 C. B. 839; *Butcher* v. *London and South-Western Rail. Co.*, 16 C. B. 13; *Midland Rail. Co. v. Bromley*, 17 C. B. 372.

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company who issued the ticket (*k*). In the absence of special contract (*l*), they are bound to carry the passenger and his luggage safely to the place to which he is booked, or cause them to be carried on other lines as substitutes for themselves (*m*). Thus, in 1859, a passenger named Mytton desiring to go from Newport to Birmingham took a ticket at the Newport Station of the South Wales Railway Company. The journey was made over that company's line to Grange Court, about twelve miles from Gloucester, thence over the Great Western to Gloucester, and from Gloucester *viâ* the Midland to Birmingham. The South Wales Company had an arrangement with the other companies to issue through tickets, the fares being afterwards divided in due proportions between the companies. Mytton gave his portmanteau to the porter at Newport, who labelled and placed it in the train, and at Gloucester Mytton took it from the carriage in which it was and gave it to the guard of the Midland train, who placed it in the luggage van, but at Birmingham it was missing. In the Act of Parliament incorporating the South Wales Railway Company, it was enacted that every passenger might take a certain amount

(*k*) *Mytton* v. *Midland Rail. Co.*, 4 H. & N. 615, *ante*, p. 96; but see *per* Martin, B., in *Coxon* v. *Great Western Rail. Co.*, 5 H. & N. 279, if it can be established that the companies are partners in the transaction, there would be a right to sue any one of them; and see *Gill* v. *Manchester Rail. Co.*, L. R. 8 Q. B. 186.

(*l*) *Ante*, p. 113.

(*m*) *Kent* v. *Midland Rail. Co.*, L. R. 10 Q. B. 4, *per* Blackburn, J.

of ordinary luggage, but at his own risk. In the Midland Railway Company's Act there was no such provision, therefore Mytton sued the Midland Railway Company. But it was held that that company was not liable. There was but one contract, and that contract was with the South Wales Railway Company (*n*).

Where by a special contract (*o*), as by a condition in the time-tables referred to on the ticket and brought to the knowledge of the passenger (*p*), the company issuing the ticket repudiates any liability for loss or damage arising off its lines, in order to obtain the benefit of that condition the company must show that they had delivered the luggage out of their custody into the custody of some other company. Thus, in 1874, a passenger from Bath to Chester had bought a ticket at the Midland Railway Station at Bath; and on the ticket was printed:—

> This ticket is issued subject to the regulations and conditions stated in the Midland Company's time-tables and bills.

and on the time-tables and bills was printed:—

> The granting of tickets to passengers to places off the company's lines is an arrangement made for the greater convenience of the public; but the company does not hold itself responsible for any delay, detention, or other loss or injury whatsoever arising off its lines.

(*n*) *Mytton* v. *Midland Rail. Co.*, 4 H. & N. 615, *ante*, p. 96.

(*o*) *Ante*, p. 113.

(*p*) *Ante*, p. 111 note.

CHAP. V. The line of the Midland terminating at Birmingham, the journey had to be continued by the North-Western. The station at Birmingham belongs to the North-Western Company, but the Midland Company is entitled to the use of it and to the service of the porters. The passenger saw a porter with his luggage on a truck on the platform from which the North-Western train was to start, which was on the other side of the station to where the Midland train had come. That was the last he saw of it, and on the arrival of the train at Stafford it could not be found. On these facts it was held, in an action by the passenger, that he was entitled to recover damages in respect of his loss from the Midland Company. Supposing the condition applied (as to which the Court abstained from expressing any opinion), in order to bring themselves within it the company ought to have shown that the luggage was delivered into the custody of the London and North-Western Company (*q*).

XV.—CLOAK-ROOM.

For the convenience of travellers railway companies have established "cloak-rooms," or "left luggage offices," at their principal stations, but they do not incur the liability of common carriers in respect of articles deposited there. They have hitherto relied upon the conditions printed on the

(*q*) *Kent* v. *Midland Rail. Co.*, L. R. 10 Q. B. 1.

ticket granted by them to a depositor on receipt of the article and payment of the charge as constituting a special contract, but the question has recently arisen whether the company is protected by the conditions if it is not shown that the depositor was aware of them.

In one case (*r*), decided by the Common Pleas Division of the High Court, on May 1st, 1876, it was held that the company was not protected. The ticket bore on the face a receipt, and at the bottom was printed, "See back." The jury had found that the passenger did not read, nor was aware of, the conditions, nor ought he under the circumstances of the case, having used proper caution, to have read or been aware of them.

In another case (*s*), decided by the Queen's Bench Division, on May 30th, 1876, it was held that the company was protected. The ticket bore on the face a receipt, and at the bottom was printed, "Left in the name of ——, and subject to the conditions on the other side." The person who deposited the luggage and received the ticket stated in evidence that he was not aware of the conditions. Being asked, "Were you not aware it contained some conditions with reference to the deposit of the luggage, although you were not aware what they

(*r*) *Parker* v. *South-Eastern Rail. Co.*, 45 L. J. C. P. 515, *S. C.* L. R. 1 C. P. D. 618; following *Henderson* v. *Stevenson*, L. R. 2 H. L. Sc. 470, *ante*, p. 36.

(*s*) *Harris* v. *Gt. Western Rail. Co.*, L. R. 1 Q. B. D. 515. See *Van Toll* v. *South-Eastern Rail. Co.*, 12 C. B. N. S. 75.

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were?" He answered, "I believed that there were some conditions." And in re-examination he said: "My attention was not called to any condition, and I never gave it a thought." The Court was of opinion that by depositing the goods and taking this ticket, he had so acted as to assert to the company that he had looked at and read the ticket, and ascertained its terms, or was content to be bound by them without ascertaining them, and so induced them to enter into the contract with him in the belief that he had assented to its terms (*t*). One judge (*u*), however, while agreeing with the above doctrine, was of opinion that under the other circumstances of the case the company was liable—that the condition relied on (that the company would not be responsible for loss of any package above £5 in value, unless declared and extra charge paid), applied only to a deposit in the cloak-room, whereas in the present case the articles having had put on them cloak-room labels, were left without any other protection, not in the cloak-room, but in the vestibule, whence they were stolen through the negligence of the company's servants.

Where the terms of the ticket are simply that the goods left will be delivered up on production of the ticket, the contract is to deliver up on a reasonable request within a reasonable time, and what is a delivery within a reasonable time upon

(*t*) See *per* Blackburn, J., distinguishing *Henderson* v. *Stevenson*, L. R. 2 H. L. Sc. 470, *ante*, *p.* 36.

(*u*) Lush, J.

a reasonable request is a question of fact to be determined on reference to the surrounding circumstances (*x*). CHAP. V.

(*x*) *Stallard* v. *Gt. Western Rail. Co.*, 31 L. J. Q. B. 137.

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